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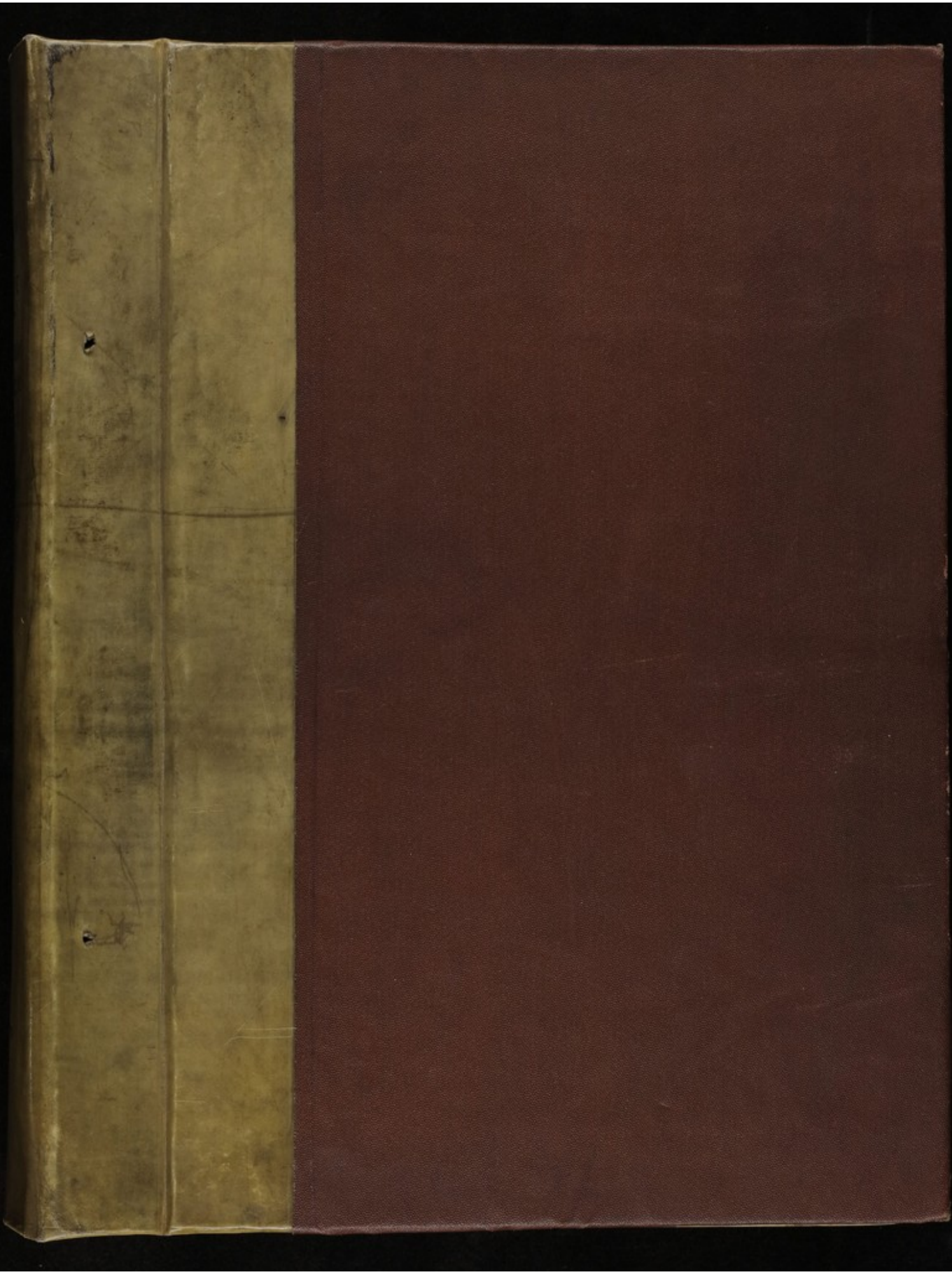
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C. J. S. T

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In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
Friday, November 20th, 1903.

BEFORE—
MR. JUSTICE BYRNE.

BURROUGHS, WELLCOME & CO.

— v.—

THOMPSON & CAPPER.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY, appeared on behalf of the Plaintiffs (instructed by Messrs. MARKBY, STEWART & Co.)

Mr. A. J. WALTER, and Mr. J. H. GRAY, appeared on behalf of the Defendants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

FIRST DAY.

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Mr. NEVILLE: My Lord, in this action I appear for the Plaintiff, who is trading under the title of Burroughs, Wellcome & Co., with several of my learned friends. The action is brought by Mr. Wellcome against a firm of Thompson & Capper, who are chemists carrying on business in
A Liverpool and elsewhere, and the claim against them is a claim for passing off goods, not of the manufacture of Burroughs & Wellcome, as the goods of those manufacturers under the name of "tabloid" or "tabloids."

On the particular question of the cases of passing-off, of course I shall have to lay evidence before you, and I do not anticipate much difficulty.

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In three of the cases not only was the trade mark used, but the initials B. and W., indicating still further the source from which the supplies were to come, were used also. We shall lay evidence before your Lordship that on a good many occasions, when a person went to a shop—of course designedly, because we had heard that this was taking place—they were supplied with medicines other than those of Burroughs & Wellcome, which was what their application was for. A

I say that in that rather cursory way, because of course, behind lies really a more important question, and that is as to the exclusive right to be set up under those circumstances to the use of the words "tabloid" and "tabloids" as indicating medicines of our manufacture. B

Mr. Justice BYRNE: Of course I can ascertain it very shortly, but were any of the firm of Thompson & Capper ever in the employment of Burroughs & Wellcome? C

Mr. NEVILLE: I think not.

Mr. Justice BYRNE: I do not think there is anything in it. I have told my firm to make a certain search. I remember writing an opinion once.

Mr. NEVILLE: If your Lordship does not recollect it further than that, it does not matter. I have not the least curiosity to know whether your Lordship ever did give any such opinion. D

Mr. Justice BYRNE: I am not quite certain that it was in connection with this Plaintiff; but I distinctly recollect some opinions a good many years ago—some ten or twelve years ago. I have told both parties, and if I do not remember more than I do, I daresay they neither of them will object. E

Mr. WALTER: We do not object in the least, my Lord.

Mr. NEVILLE: It does not impress us, my Lord, with a sense of your Lordship's incapacity to deal with the case before you now.

Burroughs & Wellcome are a firm who vend compressed medicines, F that is, medicines in a dry compressed form. This method of preparing medicine was invented some years ago—if one may use that term for it, and I suppose one may, because some patents were taken out for it a good many years ago. I think 1842 was the first instance, at all events, in this country, of the introduction of compressed medicines; and from G that time there have been—before Burroughs & Wellcome came into the market at all—vendors of these compressed medicines, which, of course, is a very convenient form of dealing in drugs. In 1872 one gentleman in London took out patents for medicine in compressed shapes—I think what might be called "discs." He called them "compressed pills," and sold H them under that designation. In the year 1884 Burroughs & Wellcome, having then a large business in these compressed medicines, desired to find out a satisfactory trade mark which should indicate the make of that particular firm, and which would be sufficiently attractive and convenient to be generally adopted by the public. Mr. I Wellcome himself, who is the surviving partner of the old firm of Burroughs & Wellcome, and still trades under the name of Burroughs & Wellcome, after many tries in different directions, hit upon the name of "Tabloid," and in 1884 he registered "Tabloid" in

Class 3 and in Class 42. Class 3 is the class for drugs, and Class 42 the class for food stuffs.

I ought to say, so as to get rid of the trade marks that we are dealing with in the action, that in January, 1885, that is, in the following year, he A was minded to register abroad, notably in Germany, but he found that he could not register a word in Germany without an accompanying device, and further, that the mark had to be registered in England before it was registered in Germany, and consequently he registered a new mark, and the new mark was "Tabloids"—the original word with an 's.' I thought B I had got it exactly on a box, but I have got it upon a Certificate of Registration. Your Lordship will see that it really is a picture of a box containing these compressed tabloids. I will hand up the original Certificate of Registration in 1884 of "Tabloid," and then the subsequent Certificate of Registration in 1885 of "Tabloids" (handing in same).

C Mr. Justice BYRNE: This thing that goes round is the device accompanying the word "Tabloids," is it?

Mr. NEVILLE: Yes, that is the device accompanying it, which was found to be necessary by German law. As my friend says, it was put on the top of the box.

D Mr. Justice BYRNE: This represents the top of a box, does it?

Mr. NEVILLE: Yes, my Lord. As I was going to tell your Lordship the usual defence has been adopted in this case, which is perfectly natural and perfectly legitimate. As a counterblast to our attempt against them, they have moved to strike our trade marks off the register. Our E marks are registered in a variety of classes, besides Class 3 and Class 42; I have not troubled your Lordship with the other classes, because they are not material in the action. My friend no doubt will, if it becomes necessary, put them in before your Lordship when the proper time comes. They are moving to F strike out all our marks for "tabloid" and "tabloids" which are now on the register. So that in that sense the validity of the trade mark comes before your Lordship, and probably the most convenient way for me to deal with the case is to deal with it as a whole, because really the issues are so interwoven that if you try to distinguish between the action and G the motion, it is very difficult not to waste time. So, with your Lordship's permission, I will deal generally with it, recognising the fact that ultimately the validity of the trade mark becomes a question in issue between us.

Mr. Justice BYRNE: Do you rely on the trade mark, as well as on H passing-off?

Mr. NEVILLE: Yes, my Lord, we do. It is probably common knowledge—at all events, I ought to put it as part of my case—that at and after 1884 this firm of Burroughs & Wellcome, was very widely known, not only in England but throughout Europe, as I vendors of compressed medicines, and they became renowned both for the quality of their drugs and notably for the accuracy of their doses. So far was this recognised by the medical profession that it became and is a common course for medical men in writing prescriptions to prescribe tabloids, thereby intending both the quantity and quality of the doses. In

Nov. 20, 1903 — many instances, as your Lordship will hear from the witnesses, they prefer to rely upon the accuracy of the drugs made up and compressed by Burroughs & Wellcome, rather than upon the accuracy of the chance dispenser so far as the quantity of the drug is concerned. Of course, as your Lordship will see, that is a matter in some cases of the very highest importance. Messrs. Burroughs & Wellcome by special machinery adopted for that purpose and by a long dealing in this particular manufacture, have acquired a proficiency which I am not exaggerating when I say it is recognised really throughout the world. My friend reminds me that it is both quantity and proportion. I meant to include the proportion in the quantity—that is to say, the certainty that by ordering a particular tabloid you are getting a known and definite and certain quantity of either one or more drugs, as the case may be.

Now, my Lord, I should like to show your Lordship precisely what these compressed medicines were, and are, that were vended in 1884 and have been ever since. I will have first the "Voice Tabloid" which is I think the original. I think that was the first form of compressed medicine which was sold under the name of "Tabloid' at all. (Specimen handed.) These are Voice Tabloids. Your Lordship will see what they are like, they are in a box like a matchbox.

Mr. WALTER: May I see that. (Handed.) I think you will find that that was never used till very long after 1884.

Mr. NEVILLE: I do not suggest that particular thing was, that is the article that was sold under tabloid in the first instance. I do not say that that box existed in 1884, or one precisely like it; but "tabloid" was used with regard to voice lozenges in 1884, and that was the first use of the trade mark "tabloid." To shorten matters, I should like, if I may, to hand up to your Lordship a case which really gives samples of the variety of different tabloids that we make. (Specimen case handed.)

Mr. Justice BYRNE: This is only handed in as a sample of the actual thing?

Mr. NEVILLE: Of the thing sold.

Mr. Justice BYRNE: Not of the boxes or the notices on the papers and all the rest of it. It is done up differently.

Mr. NEVILLE: Yes. Here is a box which has specimens in a convenient form, and they range, I think, from the 1-600th part of a grain up to considerable doses. Your Lordship will see them in all shapes and sizes. (Handed.)

Mr. Justice BYRNE: These are specimens of the things. This is not the way they are sold.

Mr. NEVILLE: Those are only specimens. This is the way they are sold. These are exhibited.

Mr. Justice BYRNE: This contains a good deal more than they used to make. These are specimens of what they do make.

Mr. NEVILLE: Oh, yes. These are all exhibits. *These* are thalmic. (Handed.) I think they are the smallest of the lot. *These* are hypodermic. (Handed.) They are the little doses that are dissolved in the syringe used for injections. *These*, my Lord, are photographic.

(Handed.) And *here* is a specimen case of sugar-coated medicine. (Handed.) If you take this box, which is a show exhibit, each article you see in the exhibit is an article of actual commerce in the form in which it is sold. (Handed.) This is another case of medicine that is in
A actual sale. (Handed.) I ought to have mentioned before that we do not deal direct with the public, we do not advertise to the public, and we have no retail place of business at all. We sell to the profession only—that is, to the trade and the medical profession. *This* is a hypodermic case for a medical man. (Handed.)

B Then, my Lord, of course, compressed medicines are of immense utility for travellers ; you are able to take a very substantial assortment of drugs in a very convenient form, in a very small space, and with very little weight. They are largely dealt in for that purpose, and Messrs. ~~Burroughs~~ Burroughs & Wellcome's tabloid medicines have actually been carried all
C over the world ; they have been as far as anybody has been towards the North Pole and they were with Emin Pasha in the Soudan, and they have been extensively used by travellers of all kinds who have to go far from civilisation and from the reach of medicines. Here are instances of cases which are supplied for that purpose. I must
D not weary your Lordship with it, but I have a list before me of eminent travellers who have carried Burroughs & Wellcome's tabloid medicines with them, including, I see, Sir H. M. Stanley, De Windt, and General Ben Viljoen. They have been in Abyssinia and Ashanti, and the Jackson-Harmsworth Expedition took them, and so did
E Emin Pasha. We have some interesting relics. This is the veritable belt which Dr. Nansen had on his expedition towards the North Pole which has come back. If your Lordship does not mind looking at it you will see in what a very convenient form this medicine is packed. Your Lordship will see the trade mark on the webbing. I have got the Stanley
F chest here, but it has not got the actual trade mark upon it ; the things inside were marked, so that does not assist my purpose. *There* is one that has been to Ashanti (handed) ; there you will see the mark in a somewhat different form.

Mr. Justice BYRNE : I do not see it in this.

G Mr. NEVILLE : It is on the webbing just between the two buckles.

Mr. Justice BYRNE : Yes, I see " tabloid."

Mr. NEVILLE : That is a case that went with the hospital ship " Maine " that has the " tabloid " marked on the corner of the case. (Handed.) Then the ordinary form in which the goods are sold by
H chemists is *this*. (Handed.) In these are the samples of what they supply, and these cases are supplied to them to show in their shops. They sell out of them any of the drugs the case contains. Your Lordship will see they are all marked with the " tabloid."

Mr. Justice BYRNE : Yes, I have seen those.

I Mr. NEVILLE : Here we have a case for photographic goods only, and that is done in the same way. Of course, my Lord, the things that I am showing you now are the things that are in the market at the present time and being used at the present time. Of course, during the last few years, in consequence of occasional attempts to infringe what we

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conceive to be our rights, Messrs. Burroughs & Wellcome became more particular, both with regard to the warnings they issued to the public and in the use of inverted commas with the tabloid, and so on, and to impress upon the attention of the trade——

Mr. Justice BYRNE : *This* appears to be a specimen that is now sold on the market—the other one does not happen to be. That happens to be "tablets" by one Baker. I just sent to my room to see what was on the market. *This* one is on the market because I bought it myself. I will put them away.

Mr. NEVILLE : May I see them, my Lord.

Mr. Justice BYRNE : It was mere curiosity. You need not trouble.

Mr. NEVILLE : There are a great many tablets sold.

Mr. Justice BYRNE : Yes, this one I sent for happens to be one.

Mr. NEVILLE : They are made by certainly several different makers. I am told there are not only several, but there are at least 50 or 60 makers of tablets, and I have here a case of a variety of tablets cascara and all sorts of things. We will not trouble your Lordship with them at present. Your Lordship may at present take it from me that I am going to prove that these compressed medicines are sold by different people. They sell them under a variety of titles. But, my Lord, I think I shall establish beyond the possibility of doubt that it is perfectly well known throughout the medical profession and throughout the trade that "tabloid" is the registered mark of the Plaintiffs, and I do not think that you will find that any respectable traders will come forward and tell you that they have intentionally sold medicines other than those of Burroughs & Wellcome as tabloids. When I say that I am taking a leap in the dark, I say they ought not to have done if they have done, and I do not think they will be found to have done so; but, at all events, we can show that since 1884 to the present time on every single occasion when it has reached our ears that anything of the kind was going forward in the only three cases of actual infringement that we knew of we commenced actions, and in every one of those actions the Defendants did not dispute the claim and consented to an Injunction. In this particular case I think your Lordship will find there has been no standing by of any kind or toleration of any infringement of what we claim to be our rights, and whatever rights we have had we have been diligent in supporting from the time we put our mark on the register to the present time. How far, of course, our rights have been really respected we cannot tell. All I can say is, so far as our knowledge goes, up to the present time we have never heard of a single instance of infringement, and, further than that, wherever we have found the word "tabloid" used under circumstances which would indicate that it was a word of general import and not a word of origin designating the Plaintiffs' goods, we have always remonstrated, and I think I may say, in every case, remonstrated with effect. There have been instances where "tabloid" has been inserted in new editions of dictionaries as an English word.

Mr. Justice BYRNE : If you wanted to describe the shape of an old-fashioned acidulated drop, what shape should you call it? I should have

thought "tabloid" was an exact description of it; it is like a table and somewhat oviform. It may be it is in consequence of your use of the word that I have got the impression that it is the proper word for it.

Mr. NEVILLE: That is exactly what I was going to suggest.

A Mr. Justice BYRNE: But I should have thought in an old dictionary I should find it. It does exactly describe the shape of an old fashioned drop.

Mr. NEVILLE: It exactly, to your Lordship's mind, describes the articles that Burroughs & Wellcome have ~~invented~~ vended since 1884. Your B Lordship sees they are made in a variety of shape, but I think your Lordship will find that that is not only at the bottom of your Lordship's view of the meaning of "tabloid," but that will be found from the witnesses.

Mr. Justice BYRNE: It is a very happy word for expressing the C shape. It is like a table with a slope on each side.

Mr. NEVILLE: I do not follow where the "oid" comes in there, if I may say so very respectfully. I am quite sure it was never intended to, but I do not see how "oid" describes convexity.

Mr. Justice BYRNE: You may be right. It may be in consequence D of this description that I had that impression.

Mr. NEVILLE: I think "tabloid" did not exist, and was never used by anybody till 1884. Undoubtedly Mr. Wellcome supposed he invented it. He set to work and made up this word, which he thought was a good word. He might have done that, and yet it might have been E an existing word. But I think your Lordship will find it cannot be found in any literary form of any sort or kind. It was a word unknown to the world in 1884. It is very widely known to the world now.

Mr. Justice BYRNE: It is after the fashion of words like "spheroid."

F Mr. NEVILLE: Another thing that is noticeable is this. There are an immense number of words ending in "oid" which have come into use, a very large proportion of which have come into use since 1884. Of course, there were certain scientific words which had the "oid" termination, I think, before 1884. I do not mean to say there was no termination "oid" before G 1884, but I do say that there was no "tabloid," and no word like "tabloid," but now, no doubt, if you asked a person what a tabloid was he would say it was a little medicine.

Mr. Justice BYRNE: I was putting it in another way. If I asked you now, "What is the old-fashioned acidulated drop?" you would H naturally say, "It is a tabloid."

Mr. NEVILLE: It might mean that, my Lord, but I have no doubt that we shall have witnesses who will say, "Oh, yes, I have known tabloids for years. I understand it to mean a little medicine of a particular shape." Your Lordship sees that our case is not a case as between us I and the public. We have never dealt with the public, and we have never advertised to the public, and our case is that the trade are the people with whom we deal, and there is not a man in the trade who would not know that "tabloid" was our trade mark, and that we asserted the exclusive right to the use of the word "tabloid."

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Mr. Justice BYRNE : What does "ovoid" mean ?

Mr. NEVILLE : I do not believe there is such a word even now, my Lord. There may be, but I do not think there was in 1884.

Mr. Justice BYRNE : Is there no word for "egg-shaped" ? There is "oviform," of course.

Mr. NEVILLE : Oviform. Of course your Lordship would mean "ovoid" as egg-shaped, if the word existed.

Mr. Justice BYRNE: Yes.

Mr. WALTER : "Ovoid" is in the dictionary, my Lord.

Mr. NEVILLE : What is the date of your dictionary ?

Mr. Justice BYRNE: That looks rather modern.

Mr. WALTER : 1903, my Lord.

Mr. NEVILLE : My Lord, I am afraid my learning will fail me when I come to the derivations of some of these words ; but there are a vast number of words ending in "oid," a good many of which do not refer to the shape. It may be the adoption of the Greek termination, and it may not in the English language. I have got here a list of "oids" in 1902. I cannot for the moment tell your Lordship when they were first used, but the first is an anatomical word, basihyoid, the central tongue bone. Then there is one, basipterygoid, applied to a protuberance of the base of the sphenoid bone. Then there is deuterozooid, one of the secondary, and usually sexual, zooids produced by budding or fission from the primary zooids. Then there is epipterygoid, an anatomical word, which means situated above or upon the pterigoid bone ; an epiterygoid bone or cartilage; and so they go on. Then there is a thing called oligomioid.

Mr. WALTER : These are outlandish words.

Mr. NEVILLE : I daresay. That is a thing having few or imperfect syringeal muscles. My friend says they are outlandish words. So they are, but all I mean is that even in science the termination "oid" is not used exclusively to denote form. In certain cases it does denote form.

Mr. Justice BYRNE : Undoubtedly it does. In Johnson's Dictionary of 1882 "spheroid (French, spheroide) body oblong or oblate, approaching to the form of a sphere." So there it is clearly used to denote form.

Mr. NEVILLE : I do not deny it, and one knows perfectly well why, because it is the adoption of the Greek termination, but it is not always so. If you were, in the English language, to say "When I see the termination 'oid,' I understand shape or form," you would be misled in a great many cases.

Mr. Justice BYRNE : You ask me to av-oid that conclusion.

Mr. NEVILLE : Yes, my Lord, I do. I think I am right in saying that until July, 1893—that is nine years after we had been in the market with our goods under this trade mark and trade name—there was the first instance that came to our knowledge of any attempt to infringe our rights. I need, not, I think, give the names but we did find out then a case in which an attempt was made—at least in which the word was used. We brought an action and the case was undefended. We were not troubled again until July, 1902, which is the next instance, and which is at an interval of another nine years, and again the action was not defended. Then in the same year in October we found another instance

of the use of the word in respect of which we brought an action, and again the case was not defended. But in the result from 1900 rumours had reached us (although those were the only definite cases we were able to put our fingers on) that the word was being used and that goods were being made and sold, although not of our manufacture, and from 1898 we issued a circular to the trade on the practice. I am always afraid in these cases of overloading your Lordship's desk with unnecessary exhibits. I only say we issued cautions and continued to issue cautions and issue cautions now.

There is another thing which I shall call your Lordship's attention to when the evidence comes which is an important thing to bear in mind, because I think it has a very strong tendency to show on which side the right lies with regard to the use of this word. As I told your Lordship there are an immense number of manufacturers and dealers in ~~compound~~ compressed medicines and we produce the price lists of all or nearly all of them, which they issue to the public, and in not a single case is the description "tabloid" used except in the case of the Plaintiff. As this is not a public question, but a trade question, it seems to me a matter of very great importance.

Mr. Justice BYRNE: It amounts to this, that in all those you have been able to discover, except those you took proceedings against, you have not found the use of the word for other persons' goods.

Mr. NEVILLE: Never. All the dealers in compressed medicines have used their own description and never used "tabloid" except as descriptive of our goods. If it only meant a little medicine of a particular shape or made in a particular way, or anything of that kind, that would be incredible. If the popular notion of the word was the trade notion of the word, you would naturally find in all these price lists, "I sell pills; I sell lozenges; I sell tabloids," and I daresay a good many members of the public would not be surprised to find that and would say: "Those are things you get in a little bottle"—as your Lordship says in little drops. But as far as we have been able to ascertain we do not find it in a single one. If we had we should have attacked the trader who had done that, but never, except in the three cases of which I have told your Lordship, have we had to do anything of the kind. It is a case of very great importance—I do not know that I ought to say that, because the parties in one case are as important as those in another case——

Mr. Justice BYRNE: It is undoubtedly a very valuable mark.

Mr. NEVILLE: It is a case in which I shall not be able to compress the evidence as in the ordinary course I should do, because I shall have to call before your Lordship a great many of the leading medical men in the profession, not only in London, but in different parts of the country, who will, as far as I know, give a consistent account of their knowledge of "tabloid" as the Plaintiffs' trade mark, and their intention when they use the word "tabloid" in their prescriptions. I shall call, of course, a number of the members of the other branch of the trade, the pharmaceutical branch as well, and also, as far as possible, from different parts of the country, to show your Lordship how complete throughout

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the trade was the knowledge of the proper use of this word as denoting Plaintiffs' goods. I will not say it is always the Plaintiffs' goods, but it is a matter not to be lost sight of; and certainly if the medical men say what I understand they will, it is a matter of public importance at all events that the question should be decided as to whether Messrs. Burroughs & Wellcome have a right to the exclusive use of this word because the convenient course of describing tabloid in doctors' prescriptions which undoubtedly obtains, and very widely obtains, would have to be abandoned if "tabloid" might mean a medicine of a particular shape, but not a medicine of a particular maker, because the tabloid prescribed by the medical man of the present time, to his mind, indicates a precise quantity.

Mr. Justice BYRNE: I have a recollection that a medical man sometimes puts "B. & W."

Mr. NEVILLE: Sometimes it is put. I do not deny it for a minute. I do not suggest it could not be done.

Mr. Justice BYRNE: But you say in practice "tabloid" means it?

Mr. NEVILLE: Yes, without any "B. & W." at all. Some of the doctors will tell you they put "B. & W." in order to avoid possible mistake, but others only put "tabloid" as being sufficiently descriptive.

"Tabloid" we have used for a variety of different things—for our medicine cases, and, as your Lordship sees, upon our medicine belts that have been sent out, and upon various forms of articles that we sell outside the mere discs or drops themselves in bottles. Undoubtedly in the first instance we used it more exclusively on the bottles themselves. Since that, as we have brought other things into the market, we have used our trade mark upon them, whatever they were, in cases where we thought it suitable, and where we desired to do it.

I think that gives your Lordship an outline of the case, and now I should like to deal as shortly as possible with what it is we have to prove in order to establish our case. First of all, I should like to remind your Lordship of the sections of the Act, because, however many times we read these sections of the Trade Marks Act, it is almost impossible to keep the exact words in one's mind. I will take, first of all, the amended Act, because that shows the law as it stands at the present moment. Our mark is registered under the Act of 1883, but, of course, the Act of 1888 was not then in operation.

Mr. Justice BYRNE: Section 64, is it?

Mr. NEVILLE: Yes, my Lord. The amended Act reads as your Lordship sees: "A name of an individual, a written signature, a distinctive device, an invented word or invented words, or a word or words having no reference to the character or quality of the goods, and not being a geographical name." Sub-sections D and E are the substitutions for the "fancy word" which was the word used in the Act of 1883. "A distinctive device, mark, brand, heading, label, ticket, or fancy word not in common use." So that at the date of our registration the "fancy word or words not in common use" was the test which had to be applied to a word which was proposed for registration under the Act. Under the amended Act of 1888 an invented

word or words may be registered, or a word or words having no reference to the character or quality of the goods, and as your Lordship no doubt recollects in the Solio case it was held you used those distributively—that the invented word is not subject to the qualification that it must have no reference to the character or quality of the goods.

Mr. Justice BYRNE : You come under the Act of 1883.

Mr. NEVILLE : Yes, my Lord, we come under the Act of 1883, subject to this, which I do not think it will prove important in this case, but I want to mention it because it is a point I want to have before your Lordship's mind. There have been cases no doubt in which it has been said that what you have to ascertain is the validity of the mark at the date of registration. If you take that as a universal proposition, then it cannot possibly matter what words are to be found in the Act of 1888 ; but the Act of 1888 says the Act of 1883 is to be read as though the section stood in the amended form, and then comes another section which says that it shall not alter any right or liability under the former Act. I think I shall satisfy your Lordship that we come equally well within the purview of the amended Act or the original Act I want, however, to present this point to your Lordship's mind, and that is that the rectification of the register is a question undoubtedly within the discretion of the Court, that is to say, the Court removes from the register when it thinks a mark ought not to be there, and it is within the discretion of the Court to remove it or to leave it. I shall submit to your Lordship, should you suppose it is an invented word, not a fancy word—although I think that is impossible—then the real question is, ought this mark to be removed ? And if it is a good invented word and one which is capable of registration to-day, it is not for ~~for~~ the Court to remove it because it was incapable of registration even at the time when it was actually registered, because the question the Court has to consider is, ought it to be on, and, if it ought to be on to-day, then I submit the register ought not to be rectified. It is a matter not without importance, for this reason, that if the view of the Patent Office had been otherwise, so that you could always read or register under the Act of 1888, in case you had any doubt as to the validity of your registration under the Act of 1883 it would not much matter. As a matter of fact, I daresay your Lordship knows that, rightly or wrongly, they do not re-register under the Act of 1888, but if you are upon the register before 1888 with a trade mark, and you come with the same mark and say : " Now register me under the Act of 1888," they say, " No, because you are already on the register."

Mr. Justice BYRNE : There is only one register, and you cannot have one thing ~~one~~ twice.

Mr. NEVILLE : You cannot have it on twice over. That is a point which has never been decided by the highest authority, and I think it right to point out to your Lordship there is that question upon the construction of the amended Act. In *re* Batt's case, the decision was not quite consistent with the universal proposition that you must go upon the question of whether there was a right to register at the time of registration, because there there had been a registration of a great

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number of marks, none of which were used at all, but were all quiescent, and the man had not dealt with them. He had used his power of obstructing registration as a means of getting something out of other people and the Court held that, although it was a perfectly good mark to register in 1883, judging by the action of the man and the date of his registration and the fact that it had no reference to his trade, and he had never started a trade in respect of which he used it, it must come off the register. Undoubtedly if you had come to the Court the day after the registration of his mark, you could not have got it off; but, coming 10 or 15 years after, you could get it off because the Court held it had not been registered for the purpose of trade. I am going to deal with that point very shortly, because, as I say, I think the more general issues in the case will probably render the consideration of that unnecessary, but I want to call your Lordship's attention to the fact that if it is an invented word or a fancy word, in either case we ought to be on the register.

Now the second point there, my Lord, is this: that I think it is tolerably clear, not only from *a priori* reasoning, but from recent decisions, that an invented word must be a fancy word, and that a fancy word may be either an invented word or it may be a word in use so long as applied to the goods in question. It is, as some Judges have said, obviously meaningless. There was one case which went to the contrary of that. That was the "Somatose" case, which your Lordship may recollect, "Somatose" was undoubtedly an invented word, at least, I do not think anybody could deny that it was an invented word, but it was held, not by the highest Court of Appeal, but by the Supreme Court, not to be a fancy word, and, if that was good law, then that would oust the suggestion that I make to your Lordship now; that if it is a fancy word it must be an invented word, and that it might be a fancy word without being a fancy word if your Lordship sees. I think from the later cases, the "Somatose" case is no longer good law. If the Somatose case had come before the House of Lords it would have been decided differently to what it was decided. The question is, in considering whether a thing is a fancy word or not, if it is a word you have found out, it must be a fancy word, because, until you apply it to your article, it has no meaning, and when you apply it to your article it does acquire a meaning under which it is generally advertised, I think Lord Herschell in the House of Lords points that out. It rather refers to what I was venturing to submit to your Lordship a little time ago, when you say "Yes, such a word has a meaning." Take the word "horse." You know perfectly well what a horse is. To say that the word "horse" is meaningless would be absurd.

Mr. Justice BYRNE: It depends entirely on the context. "Clothes-horse" is a very different thing.

Mr. NEVILLE: Take it even as the name of an animal. When you apply it to the animal it is descriptive, but there is nothing particularly descriptive. Of course that name is descriptive, but, at all events, in the ordinary mind there may be some remote derivation which makes it descriptive. They would all say it is descriptive

Why? "Because I understand by that it is an animal with a certain number of legs, and furnished with a tail, and so on." So if you start a name for an article which you register as a trade mark, that name very soon acquires a meaning. Let me take a case in which I had a decision against me, but which I think is illustrative of what I mean. Take "Kodak," applied to cameras. Kodak has been held to be a perfectly good trade mark, not only with regard to the camera itself, but with regard to the accessories for the camera. But undoubtedly "Kodak" having been applied to the particular article which was put on the market, a hand camera of a particular kind, it acquired a general meaning, and now people constantly refer to "Kodak," improperly, I admit. To them it means a type.

Mr. Justice BYRNE: Like the Singer type.

Mr. NEVILLE: Yes. So, my Lord, take another illustration, the "Demon" Racquet Bat, which was used with regard to a handle of a particular shape. People very soon began to call that a "Demon," and anything they saw with that particular shape of handle they called "Demon." To them very soon it became indicative of shape rather than of origin, although it was a name of origin and nobody could have sold the "Demon" unless they were entitled to sell under that name. First of all, if it is an invented word, I am right, if that point is a good one, that the amended word is what is of real importance in the present case. That it was an amended word there cannot be any doubt. Of course, that is a question of evidence, and the word itself your Lordship, I think, will have satisfactory evidence that it was made and made up with some pains and not as immediately obvious, by Mr. Wellcome himself whom I will call. Now with regard to the question of whether it is a fancy word, I say if it is a word which was applied for the first time—a word which was not of any use, and applied for the first time as the mark of Burroughs & Wellcome used in respect of this particular trade, that it is a fancy word. The one case which, I think, goes a long way, or ought to go some way towards satisfying your Lordship that the argument is a sound one, was the Bovril case. That was the case under the Act of 1883. That had to be established, or was established, on the footing that it was a fancy word. They argued it on the footing that it was a fancy word. So that if the "Somatose" case was right it is very difficult to see how the Bovril case could be right, because there was quite as much description about "Bovril" as about "Somatose."

Mr. Justice BYRNE: I do not know, but was the novel referred to in the course of that case about the Vril power?

Mr. NEVILLE: Yes, I remember the novel, but I do not think it was referred to in the case.

Mr. Justice BYRNE: I have always been in the habit of thinking that "Bovril" was taken from that—strength to be got out of a bull. It obviously was not so. "Vril" is the power to enable people to do anything they like, practically.

Mr. NEVILLE: Yes, unknown powers—a previously undiscovered force I ought to say. But what was the more obvious to the character or quality of the goods was the bovine power—the "bovis."

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Mr. Justice BYRNE: Yes.

Mr. NEVILLE: "Somatose," of course, was a ~~more~~ more invented word, I should say. I mean a less obvious reference to the article than "Bovril." I think that the "Bovril" and "Somatose" cases cannot be reconciled, and I have no doubt the House of Lords considers the Bovril decision. My Lord, it has been put now by the Court of the highest authority upon what seems to me, if I may say so with the greatest possible respect, a satisfactory basis. That is this: What was intended was not that an invented word should be treated as the invention of a patent. There the patent is granted as a reward of merit, and unless the merit is sufficient the reward would not be granted for it. You are giving a monopoly, and you are giving it in return for the ultimate communication to the public of a new idea or something new. The question of an invented word and an invention in a patent are two totally different things, because with regard to the invention of the word all that is intended is this: You shall not take a word which shall circumscribe the use by the English public of their language, and therefore if you take a word which disables an Englishman from using in his trade a word which forms part of the English language, you are doing that which it was never intended by the Acts that you should do. Your Lordship remembers that in the "Solio" case, the report of the Departmental Committee of Lord Herschell upon Trade Marks, that what the Legislature should aim at was particularly referred to, and referred to upon the footing that it was on the one hand not to make it difficult for a man to get a distinctive mark upon the register which should represent his goods, but at the same time not to allow such latitude in the matter as to infringe existing rights of the public. Therefore, a geographical name was open to objection, because although you might say that where a man was the first manufacturer of a particular article in a particular town, he might reasonably use the name of the town as descriptive of his manufacture. Still, where other people came to manufacture the same thing, it was not fair that they should be entirely shut out from using the place of origin of their goods, and consequently geographical names were excluded as the proper subject for a trade mark. So that then again, you must not have a really descriptive form. You must not take existing words of description and apply them to the goods, and so to speak, prevent other people applying the same words to goods of their own, "cheap and good," is Lord Halsbury's instance. He said suppose you came to register in respect of a particular article the words "cheap and good" made into one word, what is the objection to that? The objection is that you are really describing your goods as cheap and good, and every other member of the public has at the time when you come for registration the right to characterise his goods as both cheap and good, or good and cheap; and if that were allowed people would advertise their goods as cheap and good. I forget Lord Justice Fry's description of it, but he said: "You are enclosing a part of the great common of the English language." My friend has handed me a reference to the report of

the committee which is also referred to in the Solio case. It is Lord Herschell's committee. Nov. 20, 1903

Mr. WALTER : I do not want to interfere, my Lord.

Mr. NEVILLE : My friend cannot interfere, because the House of Lords referred to it. It is this : "The most difficult question which has arisen upon the enactment under consideration is to determine what may properly be regarded as 'fancy words.' Words are undoubtedly a most popular form of trade mark, but some limit must obviously be put upon the words which an individual may be permitted to register and claim the exclusive use of. The expression 'fancy word' is certainly not a happy one, and has naturally given rise to considerable difference of opinion as to its meaning. It will be convenient to consider first what words ought to be allowed as trade marks. There can be no objection to permitting registration of an invented word not to be found in the vocabulary of our own or any other country." That is all that is said about the invented word ; that it is to be something not found in the vocabulary of our own or any other country.

Mr. Justice BYRNE : That is only referred to as showing the object for which the Act was passed.

Mr. NEVILLE : The Solio case, I think, shows that the object has been carried into effect by the Act which was passed, because your Lordship knows that the result of that case was that an invented word or invented words stood by themselves, and it has been held in the Court below that you must tack on to the description of the invented word the other sub-section ; that is, having reference to the character or quality of the goods. The House of Lords said : "No, an invented word stands on its own basis." An invented word is what is not to be found in the vocabulary of our own country, or that of any other. You cannot have a word which is in the vocabulary, because to many minds it will convey exactly the same thing. You must not have a known word translated, but if you have a word which does not exist in the vocabulary of any other country or that of your own, then, having done that, you have satisfied the Statute in that particular. It goes on : "It seems, further, that existing words may, with advantage, be permitted as trade marks, subject to limitations which at once suggest themselves. It is manifest that no one ought to be granted the exclusive use of a word descriptive of the quality or character of any goods. Such words of description are the property of all mankind, and it would not be right to allow any individual to monopolise them and exclude others from their use. Again, geographical words, which can be regarded as descriptive of the place of manufacture or sale of the goods, are open to obvious objections. One manufacturer or merchant cannot properly be allowed to prevent all his competitors from attaching to their goods the name of the place of their manufacture or sale. The mischief would not be the same where the person seeking to register was the first person who had manufactured or sold the goods in the place the name of which he seeks to appropriate as a trade mark. But there are objections to giving a monopoly even in that case and to attempt to draw any such distinction would

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be likely to lead to difficulty and litigation. We think, therefore, that geographical names ought only to be permitted where they clearly could not be regarded as indicative of the place of manufacture or sale. We would add upon this point that we think that where any English word be rejected as not entitled to registration no person ought to be permitted to register its translation into any other language. The question has been raised whether a word having the same sound as one entered on the register, though spelt differently and with a different meaning, should be registered. The question in such a case would seem to be whether the resemblance between the old mark, "and that applied for was such as to be calculated to deceive; if it were it ought of course to be rejected."

Now, my Lord, I want to mention one or two cases to your Lordship, and only one or two, and perhaps I had better take them in order of date The first case I want to refer to is *re* Densham's trade mark, which is reported in 1895,2 Chancery,at page 176. That is the Mazawattee Tea case, which no doubt is familiar to your Lordship. The head note is as follows: "A tea dealer registered the word 'Mazawattee' as a trade mark for tea and other articles of food under the Patents, Designs and Trade Marks Acts, 1883 and 1888. The tea was mostly imported from Ceylon, and the word registered was compounded of 'maza,' which means relish in Hindustani, and 'wattee,' which means an estate in Cingalese; but the compound word had no meaning in either language. There was no estate in Ceylon named 'Mazawattee.' Held, on an application to expunge the trade mark, that the word 'Mazawattee' was a good trade mark, being a fancy word under the Patents, Designs and Trade Marks Act of 1883, and an invented word under the Act of 1888, having no reference to the quality of the goods, and not being a geographical name. The decision of Mr. Justice Romer affirmed."

Mr. Justice BYRNE: There was a case before Mr. Justice Chitty where the word "Oomoo" was allowed to be registered, although there was the word "Emu" already on the register. The word was so remote from our language that it was not likely to deceive anybody.

Mr. NEVILLE: That had nothing to do with anything that was made of an emu.

Mr. Justice BYRNE: Oh, no, it referred to Australian wine.

Mr. SEBASTIAN: It was Burgoyne's Australian wine, my Lord.

Mr. Justice BYRNE: Yes.

Mr. NEVILLE: One does not like to talk about the trend of decisions now-a-days, but with regard to these trade marks, there was a change in the attitude of the Courts towards them, and I think it was seen that the objection to trade marks had been pressed too far and to rather extreme lengths, and it seems to me that this case of the Mazawattee tea was the turn of the tide to a certain extent from the extreme views originally held, although it was to a certain extent relaxed, even before the Act of 1888 came into operation.

Mr. Justice BYRNE: You are not the first to make a somewhat similar remark with reference to unregistered trade marks. A learned author in his preface to a well known book speaks of the general

tendency of modern decisions to sweep away all previously expressed views. Nov. 20, 1903

Mr. NEVILLE : Yes, my Lord, and I think he is to some extent justified, if I may respectfully say so. Then Lord Justice Lindley in dealing with the case says : " Now, what is the objection ?" Of course there the word " Mazawattee " had been registered, and they were seeking to take it off the register upon the ground that it was descriptive or geographical —his Lordship says : " Now, what is the objection ? First of all, let us take the original word which was registered in 1887. That was registered under the Act then in force, which was the Patent Act of 1883, and Messrs. Densham were entitled to register that word under the head in Section 64, Sub-section 1, Clause (c), of ' a distinctive device, mark, brand, heading, label, ticket or fancy word or words not in common use.' They say this was a fancy word not in common use. Now, was it ? The answer to that, I think, is clear. It certainly was a word not in common use. As to its being a fancy word, did anybody ever hear of it before ? That is one test. Then it is asked : How is it compounded ? I do not care how it is compounded. It is said it is compounded of the word ' wattee,' which in Cingalese means ' estate ' or ' garden,' and ' maza,' which is part of a larger word, ' mazadhar,' meaning ' delicious.' Now let us look at the word, and ask anybody who understands Hindustani, who knows Cingalese, who knows English and the tea trade, whether he knows or ever heard of such a word, and he would tell you No. To say that such a word as that is not a fancy word, I confess, is beyond me altogether. It it is not a fancy word, I should like to know what is. I do not believe that any human being could invent a word which would be a fancy word if this word is not one." So he holds that it is good under the Act of 1883. Then his Lordship proceeds : " Then, with regard to the Act of 1888, in which the language is a little different, what is requisite under that Act is an invented word subject to this qualification, that it must have no reference to the character or quality of the goods, and must not be a geographical name." That, my Lord, has been overruled by the later decisions. " As to its being invented, I have said enough about its being that in the sense which I have mentioned, and I cannot think there can be any dispute about its being an invented word." I think we need not trouble about the qualification, because the qualification did not really apply. So that was the Mazawattee case in which the dealer was allowed to hold his mark.

Then my Lord, the Bovril case is the next one I desire to refer to, and that is reported in 1896, 2 Chancery, page 600. This is a case that was under the Act of 1883 alone. " In 1886 he registered as a trade mark for substances used as food, or as ingredients in food, the word ' Bovril ' which he had invented, and which up to the time of registration he had never used. He made over his business and trade mark to a limited company. The best known of the articles sold under this mark was a fluid extract of beef which was issued under the name of ' Fluid Beef Brand Bovril,' but the article being extensively sold, and called by the public ' Bovril,' the Company adopted this name and described it as ' Bovril ' in their advertisements. In 1896 a rival trader applied to expunge the

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word from the Register of Trade Marks on the ground that it was not a 'fancy word,' but as applied to articles derived from beef it was descriptive, and as to articles not so derived was deceptive. Held (affirming the decision of Mr. Justice Kekewich) that at the time when the mark was registered 'Bovril' was a 'fancy word not in common use,' and therefore might properly be registered as a trade mark under the Patents, Designs and Trade Marks Act, 1883, and that it was not a descriptive word, for although 'Bov.' might suggest the idea of an ox, the word as a whole would not at that time convey any meaning." Then Lord Justice Lindley, on page 604, says: "I do not think we need reserve our Judgment. Mr. Bower has treated us to a very ingenious argument, and has done his best, by a process of logic, to force us to do that which, I think, is wrong. He has asked us to substitute some expressions which fell from us in a Judgment for the language used in an Act of Parliament. Having got so far he has tried to drive us to do what, I think, would be a gross injustice. We will not do that if we can help it. What we have to consider is whether, on November 2, 1886, Mr. Johnston was entitled to register, as a trade mark for food in Class No. 42, the word 'Bovril.'" Then he goes on to the Act. Then he proceeds: "We have got to ask ourselves this—was the word 'Bovril,' on November 2, 1886, a distinctive fancy word not in common use? Now pausing there, and not referring to the decisions for the moment, can anybody say, with truth, that 'Bovril' was not then a fancy word not in common use? I confess my powers are unequal to the task; I cannot do it. It is admitted that the word was new. It is admitted that it was one that was never heard of before. If such a word as that is not to be deemed a fancy word it is very difficult to say what is." That was one of the passages that I relied on when I submitted that if you find that it is an invented word you start with the question of whether it is a fancy word. If it is invented *a fortiori* it is fancy. It may be fancy without being invented, but it cannot be invented without being fancy. I think that is what Lord Justice Lindley means there when he says: "It is admitted that it was one that was never heard of before. If such a word as that is not to be deemed a fancy word, it is very difficult to say what is." Of course, if it was a word that had never been heard of before, it could not have any meaning in the English language, but it may come to have a meaning in the English language, of course, and you may be able by its derivation and so on to find out what meaning was in the mind of the man when he made it; but it is not until he applied it to his article, and until we had become to be in the habit of applying it to that article, that it had any meaning at all, and none the less because in the composition of his new word he had used constituents which, when you see what he is applying the word to, indicate to you what he had in his mind. For instance, when you get "Bovril," when you know of the English word "Bovine," and when you know that he is making an extract of beef, you know pretty well that he had the "bov" part of it relating to the ox from which the extract was made, but that does not in the least militate against its being a fancy word.

Then the report proceeds : " Mr. Bower says, Well, that might be if this were a decision in 1886 or 1887, but the Appeal Court has said what is meant by a fancy word, and it has said that nothing can be a fancy word which is not obviously non-descriptive. He says A that Bovril is not obviously non-descriptive. He says that on the contrary it describes 'Ox' and it means 'Ox.' Let us look at that a little carefully. In the first place let us look at what the Court has said on this subject. In 'Van Duzers and Leaf's case'— 'Melrose' and 'Electric' were the words in question in those cases. B " Cases in which a coined word was not under consideration at all, but ordinary English words were under consideration, the Court said that a common word will not do. You have got a fanciful use of a known word. You must have a word which is obviously non-descriptive. I agree that that the Court went a step further in the 'Somatose' case, which turned C upon the Act 51 and 52 Vict. c. 50, s. 10, in which we have the expression 'an invented word or invented words, or a word or words having no reference to the character or quality of the goods.' The decision of the Somatose case I accept with all loyalty, although I did not agree with it. It is to the effect that D 'Somatose' was not an invented word and was not non-descriptive within that section. We did not differ about anything more than this. I thought it was an invented word, and the other members of the Court thought it was not. I thought it was not descriptive ; they thought it was. That is all. But I disregard that case, except for this purpose, namely, to E show that that was the ground of the decision. It would be altogether wrong for us to take the Act of 1883 and substitute for the words 'fancy word,' 'a non-descriptive word.' That is not the language of the Legislature. But I agree that a word which describes the article to which it is applied will not do. Let us, therefore, ask ourselves whether 'Bovril' is F a descriptive word. To my mind, it is not descriptive, notwithstanding Mr. Bower's very ingenious argument. He tries to make it out to be a descriptive word, not by taking the word, but by taking a little bit of it, and he says that because 'bov' may have some relation, and does have some relation to 'ox,' therefore 'Bovril' describes what ? G I do not see that it describes anything at all." Of course that is what Lord Herschell refers to. When you take an article and know what the article is to which it is applied, then you see that it has got a descriptive meaning ; but that will not do. " Does it cease to be a fancy word not in common use ? If it is so descriptive as to cease to be a fancy word not in H common use, well and good ; but if the description is only to be got at by the ingenious suggestion that 'Bov.' must mean 'ox,' we must ask what the whole word means. No one knows—no one ever heard of it ; I have not the slightest idea what 'Bovril' really means as a word. I followed Mr. Bower's argument, and am quite alive to the fact that it has been I applied to extract of meat. At the time when this word was first coined can one say more than this, that it had some relation, or might have some relation or application to an ox ? Is that descriptive so as to destroy its character as a fancy word ? The real truth is that this is a fancy word not in common use. I think the test suggested by Mr. Moulton is a correct

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one. I think it is eminently and purely a question of fact. Now, I ask myself this: Supposing that a Jury were asked to say whether on November 2nd, 1886, 'Bovril' was a fancy word not in common use, and supposing they said, upon a direction from the Judge, which I think it would be the duty of the Judge to give, that if they were of opinion that it really intelligibly described the thing sold it would not do, could they, with that direction, reasonably say it was not a fancy word not in common use? I do not think they could. That really settles the matter. In my judgment the appeal fails." Then, my Lord, Lord Justice Lopes gives a Judgment following that in the same sense. Then comes the Solio case— *Re* The Eastman Trade Mark.

Mr. Justice BYRNE: Lord Justice Lopes says: "I hold entirely to the definition of a 'fancy word,' which was given in those cases, namely, that to be a good fancy word, it must be obviously meaningless as applied to the article in question." Lord Justice Rigby says: "Bovril" was not in use at all, and he does not know what would be a fancy word if not that one.

Mr. NEVILLE: My Lord, I do not know whether I am right, but I think from what Lord Macnaghten says in the House of Lords, that he did not have a high opinion of the definition of "obviously meaningless," because I rather gather from his reference to it that he was inclined to be a little satirical about the use of it. I think your Lordship has followed the point we make upon that. The real thing is the difference between a word in common use and a word not in common use. If it is an invented word it is certainly not in common use and cannot be descriptive. If it is in common use it may be descriptive and will not do.

The Solio case is reported in Appeal Cases, 1898, at page 571, the title of the case being The Eastman Photographic Materials Company v. The Comptroller General. "A word which is 'an invented word' within the meaning of Clause (*d*) of Section 64, Sub section 1, of the Patents, Designs and Trades Marks Act, 1883, as amended by the Patents, &c., Act, 1888, Section 10, Sub-section 1, may be registered as a trade mark, although it 'has reference to the character or quality of the goods' within Clause (*e*). Clauses (*d*) and (*e*) are independent of each other. The word 'Solio,' held to be capable of registration as a trade mark under Clause 39, in respect of photographic paper and the decision of the Court of Appeal reversed. The term 'invented word' discussed. *In re* Farbenfabriken Application overruled"—that is the Somatose case.

Mr. WALTER: No.

Mr. NEVILLE: It very difficult to remember the names of the trade marks.

Mr. Justice BYRNE: It is said in argument to be the Somatose case in *re* Farbenfabriken.

Mr. WALTER: I think that is so.

Mr. NEVILLE: Yes, that is right. Lord Halsbury says: "This is an Appeal from the Comptroller General of Patents, Designs and Trade Marks, who has refused to the Appellants to permit the word 'Solio' to be registered as applicable to their photographic paper. Before dealing with the decision itself, I think it desirable, from what occurred

in the course of the argument, to say something as to what sources of construction we are entitled to appeal to in order to construe a statute. Among the things which have passed into canons of construction recorded in Heydon's Case, we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed, and the reason of the remedy. Now the law before the Act now in question was passed was one which had given rise to considerable litigation, and is contained in Section 64 of the Patents, Designs and Trade Marks Acts, 1883"— —then he reads that section—"That was the law in 1883, and on February 24th, 1887, a commission was appointed to inquire into the duties, organisation, and arrangements of the Patent Office under the Trade Marks Act so far as related to trade marks and designs. It appeared by the report of the Commissioners that complaints had been made as to the working of the Act of 1883, and in that part of the report relevant to the present controversy it is stated that the most difficult question which has arisen upon the enactment under consideration is to determine what may be properly regarded as 'fancy words.' Words are undoubtedly a most popular form of trade mark, but some limit must obviously be put upon the words which an individual may be permitted to register and claim exclusive use of." I read that before. On page 575 he concludes the citation from the Committee's Report, and says: "My Lords, I think no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission. Lord Justice Turner in Hawkins v. Gathercole, and adding his own high authority to that of the Judges in Stradling v. Morgan, after enforcing the proposition that the intention of the Legislature must be regarded, quotes at length the Judgment in that case." I need not trouble you about that, because the outcome of it is that under the high authority of this case you may look at the intention of the Legislature in passing the particular Statute. He says: "The objection pointed out by the Commissioners was that a particular individual could not be permitted to take exclusive possession of any part of our language; and this objection appears to have been in the mind of the framers of the earlier Statute when they made the phrase 'fancy word' part of the definition of what might be registered as a trade mark. It was the use of that phrase and its accompanying qualification which gave rise to much litigation, and I am certainly not disposed to hold that cases decided under that Act can have any bearing upon the construction of that part of the Act now under consideration, which was obviously intended as an alteration and amendment of the former Act. The present Act provides"—then he gives Section 10 and proceeds: "This word 'Solio' is claimed to be an invented word, and it has been adjudged not to be an invented word, and apparently (though I think the association of the two things involves an incorrect construction of the Statute), because it is a word which has reference to the character or quality of the goods. My Lords, I think it is an invented word within the meaning of this Statute. I know of no such word as 'Solio' in any sense which would make it intelligible here, although it is an Italian

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word meaning a throne, and although it is a Latin word in the ablative case with the same meaning. Not much reliance, however, is placed upon the word having some meaning in a foreign tongue; but what is put is that it may have extracted from it some meaning in relation to the character or quality of the goods, because the letters S, O, L, may be understood to mean the sun, and that Shakespeare in 'Troilus and Cressida' speaks of our planet 'Sol,' and that inasmuch as the goods in question are photographic papers and sunlight is operative in producing impressions on photographic paper, 'Solio' comes within the prohibition against using words which are distinctive of the character and quality of the goods in respect of which the word is sought to be registered. My Lords, my answer is that 'Solio' is not 'Sol,' and 'Sol' is not 'Solio.' It certainly is a very strange thing that you should take three letters out of a word, and, by the somewhat circuitous process that has been adopted here, arrive at the conclusion that it is not an invented word, and that it does describe the character and quality of the goods. My Lords, I desire to give my opinion with reference to the particular word, and not to go behind it. I can quite understand suggesting other words—compound words, or foreign words, as to which it would be impossible to say that they were invented words, although perhaps never seen before, or that they did not indicate the character or quality of the goods, although as words of the English tongue they had never been seen before. Suppose a person were to attempt to register as a single English word 'Cheapandgood,' or even without taking so gross an example, using a word so slightly differing from an ordinary and recognised word as to be neither an invented word nor, avoiding the prohibited choice of a word, indicating character or quality. The line must be sometimes difficult to draw; but to my mind the substance of the enactment is intelligible enough, and the comptroller has to make up his mind whether in substance there has been an infringement of the rule. Of course, also words which are merely misspelt, but which are, nevertheless, in sound ordinary English words, and the use of which may tend to deceive, ought not to be permitted. I am satisfied in this case to say that the word 'Solio' is an invented word: that it does not indicate the character or quality of the goods, and that the decision of the Court of Appeal ought to be reversed." Then Lord Herschell says: "The Court of Appeal held itself bound by a previous decision of the same Court in the case of *In re* Farbenfriken application to hold that an invented word could not be registered if it had any reference to the character or quality of the goods." Then he says it turns upon the construction of the Act. Then he says: "Before considering the effect of this legislation I think it well to refer to the fact that these two particulars of which a trade mark may consist were not to be found in the Act of 1883. On the other hand 'fancy word or words not in common use' which were amongst the essential particulars in Section 64 of the Act of 1883, are not to be found in the substituted section. It had been held that they did not cover words which were descriptive, and the section had given rise to much litigation and some divergence of judicial opinion. I cannot doubt that this was the origin of the legislation by which the words appearing in

the principal Act were omitted, and the provision found in the later Act substituted. In the Farbenfabriken case, North, Justice, said he did not see how he could hold 'somatose' to be an invented word within Clause D, having regard to the decisions with respect to such words as 'Herbalin' 'Washerine,' and 'Valvoline.' All these decisions had reference to the provisions of Section 64 of the Act of 1883 with regard to fancy words. In my opinion none of the decisions upon that part of the original section have any bearing on the new provisions to be found in the substituted section, the purpose of which was, I think, to get rid of expressions which had occasioned much embarrassment, and of all the distinctions and decisions which had been founded upon them. Those decisions so far from affording any guide to the true interpretation of the particulars designated D and E are likely to lead to error." Then he deals with the want of interdependence between the invented words and the words which follow in the second and other sections.

Mr. Justice BYRNE: Look at the last sentence.

Mr. NEVILLE: On page 580 there is a sentence which is important because it follows rather the line which Lord Lindley took. He says: "In the later part of the Judgment to which I have already referred"—that is the Farbenfabriken case—perhaps I ought to begin at the bottom of page 579, because it touches on this point. "In the Farbenfabriken case, Lord Justice A. L. Smith said, 'It is impossible, I think, to hold that the Legislature intended that an invented word might be a word having reference to the character and quality of the goods, whereas a non-invented word might not. There would be no sense in so holding.' I am unable to agree with this view. There seems to me to be the broadest distinction between the two cases. Under (*e*) any word in the English language may serve as a trade mark—the commonest word in the language might be employed. In these circumstances it would obviously have been out of the question to permit a person by registering a trade mark in respect of a particular class of goods to obtain a monopoly of the use of a word having reference to the character or quality of those goods. The vocabulary of the English language is common property; it belongs alike to all; and no one ought to be permitted to prevent the other members of the community from using for purposes of description a word which has reference to the character or quality of goods. If then the use of every word in the language was to be permitted as a trade mark, where such use would deprive the rest of the community of the right which they possessed to empoly that word for the purpose of describing the character or quality of goods. But with regard to words which are truly invented—words newly coined—which have never theretofore been used, the case is, as it seems to me, altogether different; and the reasons which required the insertion of the condition are altogether wanting. If a man has really invented a word to serve as his trade mark, what harm is done, what wrong is inflicted, if others be prevented from employing it, and its use is limited in relation to any class or classes of goods to the inventor? So far then from seeing no reason for a distinction between the particulars designated in (*d*) and (*e*) there seems to me abundant reasons for not interpolating in (*d*) words which the

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Legislature has used only in relation to (*e*)." If I might add there I will say, and not treating as authorities with regard to an invented word decisions of the Court under the Act of 1883 with regard to words in common use like "Electric" and "Melrose." "In a later part of the Judgment to which I have already referred Lord Justice A. L. Smith says that to constitute an invented word, within the meaning of the section, it must be a word coined for the first time. 'Such a word,' he says, 'is of necessity incapable of having reference to the character or quality of goods, because, *ex hypothesi*, it is an entirely new unknown word incapable of conveying anything.' With this—subject to a qualification to which I will refer in a moment—I entirely agree. An invented word has of itself no meaning until one has been attached to it. But this circumstance does not seem to me to be any ground for qualifying with a condition not applied to them the terms 'an invented word or words.' In considering the case of an application to register a trade mark under (*d*) the only question which, in my opinion, has to be determined is whether the words ought to be registered is an invented word. In one of the cases on this subject Lord Justice Kay said: 'There is extremely little invention in the matter.' It may be that the word 'Satinine,' which was there in question, was objectionable on other grounds; but if the word be an 'invented' one, I do not think the quantum of invention is at all material. An invented word is allowed to be registered as a trade mark, not as a reward of merit, but because its registration deprives no member of the community of the rights which he possesses to use the existing vocabulary as he pleases." It is in this respect that I desire to qualify my assent to Lord Justice A. L. Smith's proposition that an invented word can never have a meaning. Coming now to the particular case under discussion I cannot doubt that the word 'Solio' is an invented word, unless it is to be regarded as the Italian word 'solio,' which means a throne, in which case it has certainly no reference to the character or quality of photographic paper. If it is not to be so regarded it has of itself no meaning. As I have said, I think it unimportant, if it be an invented word, whether it has reference to the character or quality of the goods or not; but if this were the test of the validity of the word as a trade mark, I must say that I think there is no such reference. I daresay that it might occur to some minds given to etymology that 'sol,' the Latin for sun, was a component part of it when they found it connected with photographic paper; but the same minds would equally find other root bases for the word if they found it connected with books or agricultural implements. It seems to me to have no reference to the character or quality of the goods in the sense in which those words must have been used by the Legislature. I think the Judgment appealed from ought to be reversed." Lord Macnaghten says, dealing with the Act of 1883: "Everybody knows the trouble which that enactment gave. In trying to construe it the Courts were almost driven to despair, until at last in the Court of Appeal two learned Judges declared that to be a fancy word a word must be 'obviously meaningless,' though one of these two learned Judges seems to have retracted or qualified his opinion before the next

case was called on. For these very troublesome words in the Act of 1883 the Act of 1888 substituted the expression, 'an invented word or words.' It made the substituted expression a separate, independent and sufficient condition of registration. And now, if a proposed trade mark consists of or contains an invented word or invented words, it is capable of registration. But the word must be really an invented word. Nothing short of invention will do. On the other hand, nothing more seems to be required. If it is an invented word, if it is 'new and freshly coined,' to adapt an old and familiar quotation——"

Mr. Justice BYRNE: At the end of Lord Macnaghten's speech there is this sentence, which shows how difficult it is, because different minds approach the thing differently. Some people it seems to strike at once that "Solio" is in connection with the sun in connection with photographic papers, but Lord Macnaghten says: "Speaking for myself, I must confess that without explanation from others, better scholars it may be or worse, it never would have occurred to me to connect 'Solio' with the Latin word for the sun."

Mr. NEVILLE: I think, my Lord, what Lord Herschell means is that in such cases where the etymologist, the person who has a fancy for going to the root of words, sees it, it strikes him readily, but that does not mean it is not an invented word.

Mr. Justice BYRNE: Some it would strike at once—a certain class of persons but not others—persons in a particular business or some one who knew a particular language well.

Mr. NEVILLE: There is no doubt it is difficult, but what I would suggest to your Lordship is——

Mr. Justice BYRNE: I want to try and think what it is—if it conveys a meaning to any ordinary person likely to deal with the article.

Mr. NEVILLE: Whether it is likely so to affect the public mind as to restrict the existing rights of other traders to deal with the article. If it is such an obvious substitute for an existing word that really the two words mean the same thing.

Mr. Justice BYRNE: Lord Shand says: "A word would not be 'invented' which, with some trifling addition or very trifling variation, still leaves the word one which is well known or in ordinary use." Suppose you get a word like "Oxo" you would apply that remark of Lord Shand, because it is only putting "o" at the end of "Ox."

Mr. NEVILLE: I do not think that Lord Shand quite means that, because does anyone want to use "Oxo"—supposing it comes into the market as "Oxo," does it deprive anybody of the right they had before? I think not. I think that is the real test. My learned friend deprecates our discussing "Oxo," my Lord, because we may be anticipating trouble. I did not mean to do that, but it was a good illustration, and one may find many others. What I was going to put to your Lordship as the real test is Lord Justice Fry's test: Are you enclosing a bit of the great common of the English language? If so, although you may have added an unimportant termination which does not affect the meaning of the word you may have impinged upon the rights of your co-traders, but so long as you have not done that the amount contained in your word is not

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of so much importance. The question is: Is this a word in use before, or a new word? If it is a new word it cannot affect the rights of the people who found it. They have no right to say you have made the English language more copious, and consequently you have prevented me using a word which is very useful and descriptive. That is not the question. The question is: Are you deprived of any part of the vocabulary that you had before my invention? I certainly do submit that to your Lordship as the true test, and I think, when you take the meaning of all the speeches made in that Solio case, you will see that it is the basis of the thing. That is what is intended. First of all, it never was intended by any of these Acts, and, if I may say so with the greatest respect, I think that was a little lost sight of in the construction put upon it in 1883. It never was intended to limit the rights of traders, or to hamper a man in getting a distinctive mark for his goods alone. I cannot see how the public can possibly be injured by the adoption of a word as descriptive of a particular make, which was not a word belonging to the English vocabulary, which they had never used or wanted to use before.

Mr. Justice BYRNE: No. What you do get is this: If you invent a word that is so like a word in common use you so much more readily stop a man using the word in common use on the ground that it is likely to deceive people.

Mr. NEVILLE: That is another way of putting it, if I may say so respectfully. You might hamper the public in the use of an existing word. If all you do is to prevent them using your word, which they say is a convenient word and descriptive, and they would like to use it for their goods, then you are doing nobody any wrong. If by using the word "tabloid" you prevented people using the word "tablets," that would be another matter, but we do know that "tablet" is very commonly used as describing medicines put up in that form.

That, I think, completes the law, if one can call it law, that one has to lay before your Lordship. My Lord, there is just one passage in the case of the diamond mark of Bass, which came before the Courts, in which the mark was struck off by Mr. Justice Kekewich and restored by the Court of Appeal. It was not their best-known mark; it was their diamond mark, which they used on some of their ales. It is In the Matter of the Registered Trade Marks of Bass, Ratcliff & Gretton, Limited. I have it here in 19 Patent Cases, page 529. The passage is at page 539. Lord Justice Romer says this: "The mark in question is a very well-known mark, and it is remarkable for its simplicity. We all know that it has been used for a great many years, as appears from the evidence, and has not been challenged. Messrs. Bass & Co. have been registered as the owners of it for over 26 years, and, as far as I am aware, it has not been attacked until the present application was made. I think it might fairly be said that after such a long uninterrupted user, and after the trade mark has been for so long a time registered without attack, every reasonable intendment ought to be made by the Court in support of the registration. And, my Lord, one may put that notion in another way, with reference to what your Lordship said just now, that the fact that we

have used "tabloids" since 1884, with the acquiescence of the whole of the trade, is pretty clear evidence that as a matter of fact the word which we invented was not a word which interfered with the existing rights of the trade, or the manufacturers and vendors of these compressed medicines. I will not say it is inconceivable, but it is highly improbable that they would have acquiesced in something which would amount to a restriction of their use of words which they had a right to use before "tabloid" was introduced.

Mr. Justice BYRNE: If you say it is a new word, although constructed in analogy to other known words, that will do, so long as it is an invented word.

Mr. NEVILLE: So long as it is an invented word it does not matter how you get at it, as long as you are not interfering with the use of an existing word. First of all you have no right to assume that the "oid" termination is any particular oid termination. I mean to say "oid" is not a termination of invariable meaning; we have already referred to that fact; therefore you must not say this must be the adoption of the Greek terminiation and have reference to form. It must be known, and people who knew it after all are a very limited class—that there was a Greek termination which had reference to form and which sometimes had been adopted in scientific English words, that fact would not be enough to show that you had not got an invented word because *non constat* that you meant that at all; in fact I do not believe you did mean that. And again there are a great number of "oids" which have no reference to form at all.

Now, what does "Tab" mean? If it had been the adoption of the "oid," and if what had been meant had been something in the form of a tablet, I do not know that that would have been objectionable, but the natural word would have been "tabletoid." It certainly does not mean it has ~~no~~ any reference to table, and if you are simply to take it as an annexe to a termination with a definite meaning of the single word, you might get there "tabloid," if you had reference to a table, spelling it "t a b l e - o i d" and striking out the "e"; but if you wanted to have reference to tablet you would say "tabletoid." If you wanted to direct people's attention to tablet, there is no reason why you should strike out the more important portion of it. Some might say "Tab" meant table, or something of that kind. It is just as applicable to "Bovril." Some people would say that is part of the word "Bovine," or at all events, is something to do with an ox. But that kind of ingenious derivation, however obvious it may be to certain minds, is not sufficient to enable one to arrive at a definite conclusion. I venture to think that is the great difficulty, although it seems impossible to divest one's mind of the knowledge one has to-day, and what was the case in 1884, but I believe if ~~everybody~~ anybody had presented an Englishman, with full knowledge of the English language in the year 1884 with such a word as "tabloid," and said what does "tabloid" mean——

Mr. Justice BYRNE: "Tablet" with reference to medicine of a square form is as old as Lord Bacon.

Mr. NEVILLE: That is so, but I submit in 1884 "tabloid" was a

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new word, and experience showed that it was not a word that trespassed upon the rights of other persons, either physicians or medical men. I will ask my learned friend to call Mr. Wellcome into the box.

Mr. Justice BYRNE : What has the Defendant done ? I assume he has used the word.

Mr. NEVILLE : I particularly wished to say something about that. It had dropped out of my mind when I was considering this question of invention. We rest our case both on the trade mark and the trade name. We say that our trade mark is good. Of course, if your Lordship decides it is good, it seems to me that the relief follows on that ground alone, because in the present case I think we have one instance of writing, but at all events our case ~~there~~ is that where you have a name of a thing as a trade mark, a man can no more sell his goods under that name without infringement of the trade mark than he can write or stamp that trade mark on the goods. I think the authorities show that pretty clearly, but from ordinary reasoning it seems to me that if " tabloid " is a good registered mark nobody might sell an article not the Plaintiff's using the word " tabloid " without infringing the trade mark. 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 Plaintiff's, and if it had in the inception any meaning at all, which I deny, it has got a secondary meaning and has been known by all the trade to mean Burroughs & Wellcome's manufacture. If we prove that, again I say we are entitled to suceed against the Defendant because we shall prove he gave other goods in answer to a request for tabloids.

There is still a further point and that is this, that in the present case supposing both those contentions failed, we still have a good case against the present Defendant, because in cases where the order was for " tabloids B and W," still goods were passed off to the customer not of the Plaintiff's make. So we have a direct case of substitution when there can be no question as to what goods were intended, apart from the other two branches of the case, that is trade name, the secondary meaning of the word " tabloid," and thirdly, " tabloid " itself being registered.

Mr. Justice BYRNE : Yes ; if actually struck off you may be entitled to the word.

Mr. NEVILLE : Still entitled in the Action.

Mr. Justice BYRNE : That is exactly what happened in the Somatose case, the word was struck off.

Mr. NEVILLE : Yes, my Lord.

Mr. H. S. Wellcome.

Mr. HENRY SOLOMON WELLCOME, sworn.

Examined by Mr. LEVETT.

1. I think you are now the sole proprietor of the firm of Burroughs & Wellcome ?—Yes.

2. I think the business was founded in 1878, but you did not become a member of the firm until 1880 ?—That is true.

3. Your partner, I think, was Mr. Burroughs ?—Yes.

4. He died in 1895 ?—That is so.

5. Since then you have had no partner ?—No partner.

6. How many work people do you employ ?—About 1,200.

A 7. I think when you first joined the firm the firm was associated with a Messrs. Wyeth ?—Yes.

8. They were a Philadelphia firm ?—Yes.

9. I think that terminated in 1888; and from that time you manufactured what I will call compressed medicines yourself ?—We B manufactured from 1883. We were associated—it was a sort of partnership—with Messrs. Wyeth; there was an alliance between the two firms.

10. But from 1888 you manufactured independently ?—Quite independently from 1888.

11. I think you made your speciality the manufacture of what we C call compressed medicines ?—Yes.

12. Compressed medicines were not then unknown. There were others in the market ?—Yes.

13. When you first began to make these compressed medicines what word did you use to describe them ?—At first "compressed pills," "com- D pressed powders," and "tablets."

14. I think you registered the word "tablet" as a trade mark ?—Yes.

15. What was the speciality about your compressed medicines?—The special feature of our products was the peculiar accuracy of dividing the E doses and the care in regard to the composition of them, as well as the perfection of finish.

16. Did you yourself invent any machinery to get this accuracy ?—I participated in the invention of many of the devices of members of my staff.

F 17. Those in your firm, your employees?—Yes, myself and my employees devised the appliances.

18. What was the greatest degree of accuracy to which you carried this sub-division ?—The products are made from the 640th of a grain up to very large sizes—60 grains and upwards; but with those of the 600th of G a grain in dealing with very potent substances a high degree of accuracy is of vital importance.

19. Mr. Justice BYRNE: Is not that so when you get to the 640th part of a grain ?—When you get to the 640th part it is still more essential, because you are then dealing with very potent substances.

H 20. You mean the 600th part and beyond ?—Yes.

21. Mr. LEVETT: You dropped the "40"?—But the whole of our products had been characterised by the extremest care and accuracy, even those up to 60 grains in weight.

22. I understand, but that is not the point I am on now. Just give I my Lord some idea how you can divide a grain into 640 parts?—By weighing the substance and making up a given quantity that would, say, produce a thousand; then by an ingenious mechanism that has the accuracy of fine watch-work, we are able to secure the division of that into a thousand parts more accurately than you can weigh them.

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Mr. H. S. Wellcome.

23. Your method is a method of division ?—Yes.

24. By that you get greater accuracy than by weighing. I suppose scales are made so fine that you could weigh the 640th part ?—Yes, we could, but it would take perhaps 15 minutes to ascertain.

25. It could have been weighed, but you have got a better method. What about the materials you use ? What care do you take about them ? We take every possible care in selection.

Mr. Justice BYRNE : Is it one of the issues in the case that yours is not a very fine class of goods ?

Mr. WALTER : There is no such question.

Mr. LEVETT : I have got a reputation, and I am saying what our reputation is. They are trying to steal our reputation.

The WITNESS : We take not only the very greatest care, the most critical care, in the selection of the crude substances before they are refined and prepared, when they are passing through our analytical departments ; but the fine chemicals, these fine alkaloids, the more potent substances like aconitine, we prepare in our own laboratories. All our finer chemicals are prepared by ourselves. So that not only the tabloid products, but also the contents, are of our own manufacture, and are of exceptional purity and exceptional quality.

26. Now I will put a general question : What sort of reputation has the compressed medicine your firm produces, first, in England, and then throughout the world ?—We are credited with having revolutionised the methods of administering medicines and prescribing by medical men within the last 20 years.

27. Simply answer my question—good, bad, indifferent, or what ?—We are credited with having a good reputation.

28. I think in the year 1884 you thought of having some new name for your compressed medicines ?—Yes.

29. At that time you told my Lord you were using the word " tablets " ?—Yes.

30. How did you set to work to find the new name ?—I passed through my mind all the letters and syllables I could think of. I wanted to coin some word that would be euphonious, that is, something that would be pleasing to the ear, and that would be easy to remember.

31. What was the result of your efforts ?—The result was the word " tabloid."

32. May I take it that, as far as you are concerned, that was entirely a new word ?—It was entirely a new word.

33. When you had invented the new word I think you registered it. I will put in the registration now ?—Yes.

34. It was first registered, I think, in 1884 in two classes, 3 and 42 ? —Yes.

35. A little later, did you want to have a trade mark in Germany ?—In Germany and Austria. It was necessary to register the mark in a special way, that is, to associate it with a design in England before securing a mark abroad.

36. You are going rather quick ; just take a step at a time. In

Germany and Austria, will they register a simple word by itself?—At that time they would not.

37. So if you wanted to get "tabloid" registered in Germany you had to associate it with some device?—Yes. It was necessary that it A should first be registered in England in that manner.

38. That would be the next step. You could not register "tabloid" alone?—No.

39. You had to associate it with a device first?—Yes.

40. Now, coming after that, you were going to say what registration B the German people required before they would register?—They required it to be registered in England first.

41. Then, I take it, in 1885 you registered the second mark "tabloids" and something that looks like the outside of a box in the same two classes as before?—Yes.

C 42. Then I think you registered in Germany the two, did you not?—Yes.

43. I believe since this action was brought you have made a search to see whether "tabloid" was really a new word?—Yes.

44. Have you been able in any way to find the word "tabloid"?—I D have never been able to find any use of the word, and I have never found the word in any shape or form before the date of my invention or registration of it.

45. Now when you first began to use the word "tabloid" did you use it as you use it now in inverted commas, or how did you use it?— E No, we used it sometimes as a word by itself; sometimes the word "tabloid," sometimes "tabloids."

46. Did you at once give up using the words "tablets" as well?—No.

47. I think you have a set of price lists. My Lord, I have a long list F here, and what I propose to do is to put them in, but not to weary your Lordship by going through them all. I want to ask your Lordship to pick out so that we can make a note of them, any number you wish to put in, say three?——

Mr. Justice BYRNE: Yes, put in 3.

G Mr. LEVETT: I will not pick them myself. Will your Lordship say 1, 17 or 18 whatever it may be any number. What your Lordship may take I will take.

Mr. Justice BYRNE: Mr. Walter will pick them.

Mr. WALTER: I did not quite catch what you said.

H Mr. LEVETT: I do not want to trouble with the whole of them. I want to make a selection, and I asked my Lord to pick. Perhaps you will pick what numbers I am to take. Do you want Nos. 6, 7, or 8, or do you want them all?

Mr. WALTER: I will leave you to pick your own.

I Mr. Justice BYRNE: I am not going to pick them. I shall have no doubt that yours are fair selections.

Mr. NEVILLE: Mr. Burroughs produces a few. I should have thought that those will do.

Mr. LEVETT: Those are what we have marked.

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Mr. H. S. Wellcome.

Mr. Justice BYRNE: You have your two certificates first.

48. Mr. LEVETT: This will be H.S.W. 1. I think that is the list of prices of 1885, is it not? Is that right?—Yes.

(Exhibit put in and marked "H.S.W. 1."

Mr. WALTER: Have you a copy? A

Mr. NEVILLE: You will see this. The older ones are rather scarce.

Mr. Justice BYRNE: Who is Fairchild?

49. Mr. LEVETT: Your Lordship has got: "Pepsin ~~tablets~~ Tabloids Fairchild"?—That is the maker of the pepsin. B

Mr. LEVETT: Has your Lordship got "Pancreatic ~~tablets~~ Tabloids Fairchild," as well?

Mr. Justice BYRNE: Yes, it is the next one.

50. Mr. LEVETT: Yes, it is the next one. Then there is: "Pancreatic ~~tablets~~ Tabloids Fairchild" again. In all those cases what is the meaning C of the word "Fairchild"?—They were the makers of the pancreatic product or the pepsin.

51. That means the particular element put into your tabloid was their manufacture?—Yes.

52 Mr. Justice BYRNE: What is an "elixoid"?—The "elixoid" D is a fluid preparation.

Mr. LEVETT: On page 11 your Lordship will find another.

Mr. Justice BYRNE: "Hypodermic tabloids, compressed."

53. Mr. LEVETT: What were those?—Those were the substances which are in the exhibit. They are hypodermic for dissolving in water E and injecting hypodermically. Those are hypodermic your Lordship has.

54. Mr. LEVETT: I believe they have to be dissolved, and so they are injected. That is right?—Yes.

Mr. Justice BYRNE: These little bottles are for dissolving?

Mr. LEVETT: Yes. There is a word I had not seen, "elixoid," in F that same catalogue.

Mr. Justice BYRNE: The elixoid is on page 7.

55. Mr. LEVETT: What are elixoids?—They are liquid ~~preparations~~ preparations.

56. Which you make?—Which we manufacture. I think "valoids" G are also.

57. Mr. Justice BYRNE: I see when you sell pepsin tabloids on another page, page 9, Fairchild's preparations, do those all refer to the preparers of the material?—The preparers of the pepsin or the pancreatic preparation. ~~They~~ have the exclusive control of those products.

58. Mr. LEVETT: Where do you get those words "elixoid" and the other word you gave me from?—I invented "elixoid," also "valoid" and "soloid."

Mr. LEVETT: Now, my Lord, I am going to put their price list I in order to find the words "tabloid" and tablet.

Mr. Justice BYRNE: What is the date of this next one?

Mr. LEVETT: 1887. I am going to put this in as a specimen where tablet and tabloid are found together side by side.

(Document put in and marked H.S.W. 2.)

Mr. Justice BYRNE : These are not in reference to other people's goods. This is tablets and tabloids.

59. Mr. LEVETT : Have you ever used the word tabloid in respect of anybody else's goods except your own ?—Never, except our own goods. May I explain with regard to the tablets ?

A 60. I will ask you about the tablets later. Answer the questions I put. If your Lordship has that book before you, on page 7 you will find pepsin tabloids.

Mr. Justice BYRNE : Here is a long list of tabloids and tablets.

B Mr. LEVETT : Will you just look at page 23 where the two come side by side.

Mr. Justice BYRNE : And on the next two pages, there is a long long list with a heading to each page.

61. Mr. LEVETT : At that time you were selling your manufacture under two names ?—We were issuing two lines of products—tabloids and C tablets—gradually replacing the tablets with tabloids.

62. At that time you were selling both tabloids and tablets ?—We were selling both.

63. Mr. Justice BYRNE : I see on page 31 of this you apply "tabloid" to Wyeth things. You have Wyeth tabloids and tablets ?— D That would be a mistake there. It should be a cross reference. We were proprietors of the trade mark of the name Wyeth in Europe, and the trade mark we held. I think that is only a cross reference.

64. It is tabloids and tablets ?—That is simply to say it is under the name of Wyeth. We had issued tablets under the name of Wyeth E previously, and if they referred to Wyeth it is, "See tabloids and tablets." I believe there is some error in the way it is placed.

there

Mr. LEVETT : Now I am going to take May, 1890. I want you to look at page 18. (Handed to Witness.) On page 18 there is an entry : "Hypodermic tabloids. Compressed drugs. Prepared by Burroughs, F Wellcome & Co." I think, if my copy is right, tabloid is in inverted commas.

Mr. Justice BYRNE : Yes.

Mr. LEVETT : They are "stated to contain 20 tabloids and others 12 tabloids." The word tabloid in the first case only is in inverted G commas. I suppose that is my note. That would not be on that. The inverted commas are shown.

Mr. Justice BYRNE : Yes.

(Document put in and marked H.S.W. 3.)

65. Mr. LEVETT : Does that suggest the time when you began to H use this word tabloid more distinctively by putting inverted commas ? —Yes.

66. I think the same thing happens at page 41. Tabloid is again in inverted commas.

Mr. Justice BYRNE : And after that at the head of it. Then it I goes on from page 14 to 20. Then the use of the word occurs in a list without the inverted commas.

67. Mr. LEVETT : I am trying to trace the change when inverted commas began. Later on I think we shall find they are in inverted commas all the way. Pausing there for a moment, I have got to 1890

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now, that is about six years after the registration. Up to that time were you aware that anybody else had used the name tabloid?—No one ever used the word tabloid except ourselves.

68. So far as your knowledge goes?—Never. Any case which did occur—I do not think it ever did occur—we stopped them. A

69. Do not wander away; just answer the question. Fix your mind on this: I am speaking of 1890—up to that time as far as you know?—To the best of my knowledge no one ever used it except ourselves.

70. Now we will skip a couple of years, and go to 1892. This is your trade ~~circular~~ price list of 1892. Just look at page 3 before I hand it up. (Document handed to Witness.) I think there you will find "hypodermic tabloids compressed drugs," then come a lot of things mentioned?—Yes. B

71. I think there the tabloid is in inverted commas?—Yes.

(Document put in and marked H.S.W. 4.) C

Mr. Justice BYRNE: This one has got a picture of the box and "Voice tabloids" on the box. So I suppose the inverted commas were not used on the box.

Mr. LEVETT: On page 3 your Lordship will see there the heading: "Hypodermic tabloids, compressed drugs prepared by Burroughs, Wellcome & Co." D

Mr. Justice BYRNE: Yes, with inverted commas.

Mr. LEVETT: I think if your Lordship turns over the page you will find a wood cut on page 4 and "Hypodermic tabloids" on the case.

Mr. Justice BYRNE: Yes. E

Mr. LEVETT: On page 9 again, "Tabloids of compressed drugs." Tabloids again in inverted commas. Page 13, "Tabloid Fairchild," and underneath that "see Fairchild preparations."

Mr. Justice BYRNE: On page 11 there is a bottle represented with tabloids in inverted commas. 'Tabloid—chlorate of potash." F

Mr. LEVETT: I was not aware of that.

Mr. Justice BYRNE: It occurs with and without. It very often occurs with the inverted commas.

Mr. LEVETT: I may take it shortly that throughout that tabloid has got inverted commas in most places. I am not sure that they are all in inverted commas. G

Mr. Justice BYRNE: No, not all. There is another representation of a box, that has not the inverted commas; and when they are in the sub-heads I do not think they have them. However, it occurs a great many times. H

72. Mr. LEVETT: Now take July, 1893. The word "Trade Mark" is used here. Look at page 16, and read the small type at the top of the inside column?—"Tabloids of compressed drugs. The word 'tabloids' is our registered trade mark."

Mr. Justice BYRNE: But that is not accurate, is it? "Tabloid" is really the word. I

Mr. LEVETT: Yes, my Lord, "Tabloids" in the second, "Tabloid" in the first. Then I think on page 19, your Lordship will find it single again, "Tabloid, Trade Mark." That is on a picture."

Mr. Justice BYRNE: Yes. There are four pictures on that page, three are "tabloid" in inverted commas, one without.

Mr. LEVETT: Is the word "Trade Mark" appearing, my Lord.

Mr. Justice BYRNE: I rather think it is, Mr. Levett, but my eyesight is not good. Will you look at it? (The document was handed to the learned Counsel.)

72A. Mr. LEVETT: My Lord, it is. That is 1893. Now let us go to January, 1895. Let us take page 5. "Compressed drugs and chemicals"?—Yes. "Compressed drugs and chemicals. See 'Tabloid.'"

73. "Tabloids" is in inverted commas?—Yes.

74. Then underneath that there is "Hypodermic and ophthalmic 'tabloids,' photographic 'tabloids' and soloids." Then if your Lordship will turn to page 7 you will find the "trade mark" again. "Hypodermic 'tabloids' (trade mark) compressed drugs." Then at page 10, under the heading "Iodic hydrarg," "tabloids" appears. Then on page 16 "Ophthalmic 'tabloids' (trade mark)." Page 17, "Photographic 'tabloids' (trade mark)." Now I take January, 1897. Just look at page 5. That is very much like the last?—"Compressed drugs and chemicals see 'tabloids,' hypodermic 'tabloids,' photographic 'tabloids' and soloids"—all in quotation marks.

75. Then on page 7 you will find "Hypodermic 'tabloids' (trade mark), compressed drugs"; page 16, "Ophthalmic 'tabloids' (trade mark)"; page 17, "Photographic 'tabloids' (trade mark)," in all cases "tabloids" being in inverted commas. Those are pages 7, 16, and 17.

76. Now we are going to have "tabloid brand" in 1898. I want you to look at two pages here—page 10 and 39. (Handing price list to the Witness)?—Do you find on page 10 "Pepsin tabloid brand"?—Yes.

77. Now turn to page 39. I think you will find there "trade mark 'tabloid' brand, compressed medicinal and chemical substances?—Yes.

78. That is when you began to use the word "brand" at that time?—Yes, about that time.

79. Mr. LEVETT: On page 39 your Lordship will see just below the part the witness looked at, also "Hypodermic tabloid products. Photographic tabloid products. Ophthalmic tabloid products. Soloid products," and so it goes on. "The word 'tabloid' is a brand which designates the fine products manufactured by Burroughs & Wellcome. Under this brand is issued an immense variety of their products and their combinations. In ordering, the greatest care should be exercised to use the word 'tabloid,' to which, as an extra safeguard, the initials B., W., & Co. may be added. (To the Witness): Did you find as a matter of fact sometimes people did take that safeguard and did add the initials?—Yes, as an additional safeguard.

80. I will take one other price list in 1899—that is where you began to caution?—Yes, this is one of our earlier cautions.

Mr. Justice BYRNE: This one in 1898 is a caution. "In ordering tabloids, as an extra safeguard, the initials B. W. & Co. may be added."

81. Mr. LEVETT: Here is a direct caution coming now?—A special caution.

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82. On the first page you will see: "The registered trade mark 'tabloid' is an arbitrarily coined word or brand which designates specifically that goods supplied under this brand are manufactured by Burroughs & Wellcome."

Mr. Justice BYRNE: It is addressed to "the few who do not know." A

Mr. LEVETT: Yes. "The sale of articles of any other manufacture when the word 'tabloid' is used in ordering is an infringement and unlawful." The word "tabloid" there is all through in inverted commas in my copy. B

Mr. Justice BYRNE: I think so, so far as I can see.

83. Mr. LEVETT: My learned friend will see all those. (To the Witness): That was in 1899. Now, turning to October, 1900, the caution gets stronger. It is a coloured paper?—Yes.

(Book handed to his Lordship.) C

84. On page 58 we repeat the old caution, "When ordering the greatest care should be exercised to use the word 'tabloid.' Many, however, adopt the extra safeguard of adding the initials 'B.W. & Co.' or the full name, Burroughs, Wellcome & Co. Any cases of substitution should be reported." Those are the documents we have been sending out D to the trade. In October, 1901, the caution takes a different form, a pictorial form. (Handing book to his Lordship.)

Mr. Justice BYRNE: That, I see, is again copyrighted.

Mr. LEVETT: Is the picture signed by the artist?

Mr. Justice BYRNE: I do not notice it, but I see it is copyrighted. E

85. Mr. LEVETT: Then I put in a bundle of price lists which I believe are the current lists you are actually using now. (Handing same to the Witness.)?—Yes

86. That is the actual working set?—Yes.

87. Just run your eye through them?—Yes, those are the current F lists.

(Bundle handed to his Lordship.)

(Adjourned for a short time.)

88. I think that is what you call your label book, is it not? (Handing same?—Yes. G

89. Those are the actual labels which you use in your trade. When did they begin?—I do not see the date.

90. I am told it is 1896. Do you mind looking at the first label?—It is 1898.

91. We will take it at 1898. Just look at the last. How far does it H go?—1902.

92. I put that in. Those are the actual labels. (Exhibit put in and marked H.S.W. 13.) I think those are the labels you actually put on the bottles?—Actually on the goods which are put up for sale.

93. I want you to give my Lord some idea in hundreds or thousands, I

or more than that, what number of bottles you have sold with those labels on ?—They would go into many millions—hundreds of millions.

94. Bottles with those labels on ?—Bottles bearing those labels. They amount to many millions a year.

A 95. How many millions a year, do you say ?—I know many millions each year. I could not tell you off-hand with a certainty the exact figures.

96. Now I want to put in the show case first. Is that the actual show case which you supply to chemists ?—That is one of the actual show cases which we supply to chemists for the sale of our product.

B (Exhibit put in and marked H.S.W. 14.)

97. Are those the actual packages which are supplied to the chemists ?—Yes.

98. Take one out ?—That is what we call the "outer."

99. Just tell my Lord what they are ?—There is the outer, then this,

C the carton, which contains the product, each bearing the label.

100. First take the outside of all, what is called the "outer," I think. What do you call that ?—We call this the "outer." (Indicating.)

101. What do you find marked on the "outer" ?—The trade mark—"Tabloid brand ; fine products."

D 102. What do you call the next one ?—The carton.

103. What is marked on that ?—"Trade mark, tabloid brand."

104. Take the bottle ?—"Trade mark, tabloid brand."

105. I do not want you to look at every box, but is that a fair specimen of the way you send out your goods ?—It is. It is practically

E ~~uniform~~ uniform in that manner of labelling.

106. We put in that case, my Lord. (Exhibit put in and marked H.S.W. 15.) I want my Lord to see that first ?—That is the manner of those which are sent out in bottles of 100, and *this* is typical of those which are sent out in the oval bottle (indicating).

F 107. I will take that in a moment. What do you say about that little box you have there ? Just tell my Lord what you say about that ?—"Trade mark, tabloid brand, fine products," and the bottle is labelled "Trade mark, tabloid brand."

108. What do you call those cases. What is the word for them ?—

G Medical pocket cases ; these are ophthalmic.

109. First answer my question. Is that the actual form in which you sell ?—Those are in the actual form in which we sell and which we have sold vast quantities of.

(Same put in and marked H.S.W. 16.)

H 110. Just take one of them as a specimen. What is outside it ?—"Tabloid brand, ophthalmic case," and the other is, "Trade mark tabloid brand."

111. What is that brown thing ? What do you call that ?—That is a Tabloid medicine chest.

I 112. Just open that. What is outside it ?—That is marked inside, not out.

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Mr. H. S. Wellcome.

113. Is that a sort of case? What do you call it?—This is a "Tabloid" medicine chest.

(The Exhibit was put in and marked No. 17.)

114. Is it a sort of chest which you supply to medical gentlemen in practice?—Oh, yes, very extensively. A

115. Will you just take out one bottle, and see what is on the bottle?—The chest contains liquid preparations as well as tabloid products.

116. What sort of liquid preparations?—All sorts of liquids. Here is spirit of sal volatile, for instance.

117. Is the word "tabloid" on the liquids?—No, it is not. B

118. Now take some of the others?—The "soloid" products, you mean?

Mr. Justice BYRNE: Just let me look at that.

(The exhibit was handed to his Lordship.)

119. What is the word "soloid" used to denote?—Substances that C are never taken internally, my Lord, or substances which are not administered internally.

120. Mr. LEVETT: Like liniment and that sort of thing, for instance?—Yes.

121. Substances for external use?—Yes. D

122. Now go to the others?—I also find "tabloid" products here.

123. I think you said the word "tabloid" was found somewhere inside the case?—Yes, there is "Trade Mark Tabloid Brand" on the case. It also contains instruments and "Tabloid" bandages.

Mr. Justice BYRNE: Do you want all these put in? E

Mr. LEVETT: No, my Lord, one will do.

Mr. Justice BYRNE: This has "Tabloid Brand" outside.

Mr. LEVETT: We will have that marked.

Mr. Justice BYRNE: That is No. 16.

Mr. WALTER: Yes, that is right; and No. 17 is the chest. F

Mr. LEVETT: Yes, return all those that are not marked.

124. Now what is this tin box which I have just handed to you?—That is a tabloid medicine chest.

125. Do you find the word "tabloid" outside that?—Yes, I do.

126. Is that one of the ordinary medicine chests which you sell in G your business?—Yes, it is.

(The Exhibit was put in and marked No. 18.)

Mr. LEVETT: I want my Lord to see that. Each little bottle has the word "tabloid" on it.

Mr. Justice BYRNE: Yes. Some of these appear to be a different H class of things—they have no special shape.

Mr. LEVETT: Yes, my Lord, I am told there is cotton wool in some of them, for instance.

Mr. Justice BYRNE: Yes, there is borate wool, and gauze, amongst other things. I

127. Mr. LEVETT: Just look at this. Is that what you call one of

your smaller cases which you sell ordinarily in your trade ?—Yes, that is a much smaller tabloid case that we ordinarily sell.

128. Is the word "tabloid" inside that too ?—Yes.

(The small case was put in and marked No. 19.)

A 129. Mr. LEVETT : Is that what you sell as an ordinary doctor's tabloid chest ?—Doctor's and explorer's. We sell a very large number of those.

(Exhibit put in and marked "H.S.W. 20.")

130. What are the words inside ?—"Trade mark tabloid brand."

B That contains soloid as well as tabloid products.

131. Is that what you use for cyclists. (Handing case to Witness) ? —That is a medical cyclist's tabloid medicine chest.

132. I think the word "tabloid" is inside there ?—"Trade mark—tabloid brand."

C (Exhibit put in and marked "H.S.W. 21.")

133. Mr. Justice BYRNE : Have you a larger size for motorists?—Yes, we have a motorist's chest.

134. Which is a larger-sized one ?—Yes.

D Mr. Justice BYRNE : The substance of all this is that you have got "tabloid" on the case ; but there are a lot of things in this case that are not tabloids and are not described as tabloids.

Mr. LEVETT : That is so.

Mr. NEVILLE : And they have other trade marks on them.

Mr. LEVETT : I have not looked into the box.

E Mr. Justice BYRNE : Some are other people's goods apparently. Here is a piece of plaster, for instance ; and a bandage that has got no name on it at all. The "tabloid" on that case is all right, but you cannot read that "tabloid" as applying to everything that is inside it.

F Mr. LEVETT : Certainly not.

Mr. Justice BYRNE : It is simply a tabloid case.

Mr. LEVETT : Yes, my Lord.

Mr. Justice BYRNE : What description does the case come under ? Is it a "drug," or what ?

G Mr. LEVETT : A "tabloid case," I suppose, refers to the tabloids inside it.

Mr. Justice BYRNE : I do not know whether it means anything beyond the case itself. "Tabloid case" may mean all the contents, as much one as another ; but here it does not mean that, it means simply

H the case. It contains some tabloids, and a lot of other things, including soloids and bandages.

Mr. NEVILLE : It would come under the leather class. We have registered in a number of classes.

Mr. WALTER : I think, my Lord, since the action commenced they

I have registered in every class.

Mr. LEVETT : I accept my Lord's principle entirely, that the case does not apply to it.

135. Just look at that belt. I think there is "tabloid" on that belt ? (Handing belt to the Witness.)—Yes.

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Mr. H. S. Wellcome.

136. Just open the pocket and see what is inside the pocket ?—I am not certain what it contains now. This was the one supplied to Nansen, and it contained both soloid and tabloid products and also some bandages and things of that sort.

137. How were the tabloid things labelled ?—They are rather badly worn, and I should have to look at them. They are labelled "Tabloids," in quotation marks. A

138. Then I may take it that these things inside were all labelled "Tabloids," with the commas put outside the word ?—Yes.

(Exhibit put in and marked H.S.W. 22.) B

139. I think this chest you actually sent down to the hospital ship "Maine" ? (Handing chest to the Witness.)—Yes.

140. Outside the chest I think there is the word "Tabloid," is there not ?—Outside the chest there is "tabloid" in quotation marks; and "Medicine Chest of the American Ladies' Hospital Ship 'Maine'" C

141. Just open it. Does that contain the tabloid bottles the same as the other ?—It contains soloid products, also various cases, and "Trade Mark Tabloid Brand." Also inside the chest itself it is marked "Trade Mark Tabloid."

142. I want to get back to the actual things themselves. Do you find tabloids there inside bottles which are marked "tabloid" ?—Yes. D

143. On the bottles is the word "tabloid" put in commas, or how—just look at one of the bottles ?—It is in quotation marks, and marked "Trade Mark Tabloid Brand."

(Exhibit put in and marked H.S.W. 23.) E

144. Can you give me any idea of the number of price lists you circulate ?—We go into very vast numbers—many hundreds of thousands, really, in the aggregate. Do you mean per year ?

145. Yes, take it first in the year ?—Each year I should think we have sent out 75,000 or 100,000. F

146. That is near enough. Besides price lists, have you advertised at all ?—Very extensively.

147. Can you give me any idea of the number of advertisements you issue in a year ?—We advertise only to the medical profession and the trade, and in the medical journals. For instance, in the "British Medical Journal" we advertise something like 90 pages per year—that has a circulation of 20,000; in the "Lancet," about the same number of pages; in the "Chemist and Druggist," not far from the same number, and in the other principal trade journals and medical journals in like proportion. G H

148. One word about that. Under what description do you advertise your goods ?—"Tabloid brand products."

149. Mr. LEVETT: I have a lot here, but I will give one specimen. That book is a specimen of the advertisements you put in the "Chemist and Druggist" ?—Yes; I made a computation that the number of pages of advertisements—the number of issues of the journal—ran really into millions each year. I

150. Those are actual advertisements ?—Yes.

151. Is that book, without going all through them, a fair specimen of the advertisements you have issued ?—Yes.

(The book was put in and marked H.S.W. 24.)

A 152. Have you advertised in other ways by sending diaries round to doctors and nurses ?—Yes, to every medical man.

153. I think that is a specimen of what you call the "Doctor's Diary" ?—Yes, that goes to every medical man in the empire each year.

(The same was put in and marked H.S.W. 25.)

B 154. Now is this the "Nurse's Diary" (Handing) ?—That is sent to every known nurse in the Empire about 25,000.

(The same was put in and marked H.S.W. 26.)

155. What is the diary I am now passing up ?—The "Chemists' Pocket Diary." This goes to every chemist and every qualified chemist's C assistant throughout the Empire.

(The same was put in and marked H.S.W. 27.)

156. I think you also send round something like *this* book to all who attend the British Medical Meeting ?—At each annual meeting of the British Medical Association I issue a booklet like this.

D 157. You send it to every person who is there ?—Yes.

(The same was put in and marked H.S.W. 28.)

158. I think you keep a book you call a guard book—I do not know why you use the word guard.

Mr. WALTER: It is a very usual term.

E 159. Mr. LEVETT: I think in that guard book you insert the different circulars you issue ?—Yes.

160. Is that your guard book with the circulars inserted (handing) ? —Yes.

161. For what period does that extend ?—1899 I see is the first date F here.

162. And the last ?—Apparently to current date ~~by~~ the contents.

163. May I take it throughout that your advertisements refer to your goods as tabloids ?—Yes.

(The Guard Book was put in and marked H.S.W. 29.)

G 164. Only one more question and that is with regard to the show cards. Is the bundle I have put in your hand a bundle of the show cards you use ?—Yes.

165. Are those the show cards you issue ?—Yes, *this* one I think we issued something like 15,000 of—sending them to all chemists. The H others are in very large numbers; I am not certain of the exact number.

166. We will have those kept in a bundle by themselves.

(Bundle of cards put in and marked H.S.W., 30.)

Mr. Justice BYRNE: I will take it subject to correction that they I have "tabloid" on them.

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Mr. H. S. Wellcome.

Mr. LEVETT : Yes, that is so.

167. Have you during these years on some occasions found the word "tabloid" used by people with reference to goods not yours?—On several occasions.

168. Have you on any of those occasions allowed that to pass unchallenged?—Never. A

169. I believe on three occasions you have actually gone to litigation?—Yes.

170. I think you are now producing a set of other people's trade lists?—Yes, wholesale and retail. B

171. Do those lists represent the important people in the drug trade?—I believe all the important ones in the kingdom.

172. Have you looked through those lists?—I have.

173. Do you find in all those lists any goods except yours described as tabloids?—No, and in nearly every instance it says distinctly there that it is the trade mark or brand. C

(Bundle of lists put in and marked H.S.W. 31.)

174. Nobody has looked at them at all. I have not seen them myself. Will you just take out one instance where some trade list, not your own, refers to those as trade mark goods. You said, I think, that some referred to yours as "Trade mark tabloids." I want an instance of what you told my Lord, because I have not seen the books?—"Tabloid" in Messrs. Newbery & Sons' wholesale price list. "Tabloid trade mark. Brand products. Burroughs, Wellcome & Co. The word 'tabloid' indicates that this brand of fine products is prepared by B. W. & Co." D E

175. That is a specimen of what you meant?—Yes. I believe that is a very general description.

176. Whose catalogue is that?—Newbery & Sons.

177. What year is that?—1901.

178. Now I am going to put into your hand a bundle. I think those are advertisements issued by other people in the trade, not your advertisements at all?—These are mainly the price lists of other manufacturers of compressed goods. F

(Bundle put in and marked "H.S.W. 32.")

179. Now I will ask you one general question. Have you looked through those?—I have, most of them. G

180. So far as you have looked through them have you found the word "tabloid" applied to any goods except your own?—Not one.

181. The goods referred to there are compressed medicines, are they not?—Yes. H

Mr. Justice BYRNE : Take a specimen.

Mr. LEVETT : Give a specimen to my Lord.

(Book handed to his Lordship.)

Mr. Justice BYRNE : This particular one I have got contains a certain number. It is a very small portion of the book. I

The WITNESS : And pills and powders also, compressed, you will observe, my Lord, on the cover, the title.

182. Mr. LEVETT : Just tell my Lord generally by what names are these compressed medicines referred to ?—They are known in the trade generally as either compressed goods, or compressed pellets, compressed tablets, compressed powders, and many, I should think fully a hundred, invented names.

183. Different kinds of names ?—Invented names of various kinds, many of which terminate with " oid."

184. Is there one among those many that is named " tabloid " or not ?—Not one.

185. I believe you now produce some specimens of how the other makers do actually make up these compressed medicines. I just want you to take one ?—Yes. Varalettes is one of the names.

186. Mr. WALTER : Varalettes are effervescent ?—They are compressed goods.

Mr. LEVETT : My friend Mr. Walter seems to know all about them.

Mr. Justice BYRNE : We have all seen them.

187. Mr. LEVETT : Just hand that up to my Lord. Is that a fair specimen of the way the trade sell these compressed medicines ?—Yes.

(Put in and marked " H.S.W. 33.")

Mr. Justice BYRNE : I can tell you something else, that some of these things come from the chemists with the names entirely obscured, because it has been mentioned in the doctor's prescription.

Mr. WALTER : The chemist aiways pastes the label over, and Burroughs. Wellcome & Co. and everybody else disappears.

188. Mr. LEVETT : I think in that box which is being handed up you will find the different articles you have bought ~~for~~ the Defendants at their shop in Manchester ?—Yes.

(Box put in and marked " H.S.W. 34.")

Mr. WALTER : Did this gentleman buy them ?

Mr. NEVILLE : It is only that they were given to him as representing the firm.

189. Mr. LEVETT : Are there nine sets of them. Just see ?—There are 12 parcels here.

190. Mr. LEVETT : Will your Lordship look at the Statement of Claim page 3 in the schedule. (To the Witness.) : Have you yourself personally examined each one of those specimens there ?—Yes.

191. Are you able to say with regard to each one of those specimens whether it is or is not your manufacture ?—I feel perfectly certain they are not.

192. Does that apply to each one of them ?—To each one of them.

Mr. Justice BYRNE : Are those things complained of ?

Mr. LEVETT : Yes, my Lord.

Mr. Justice BYRNE : Let me look at them. (The same were handed to his Lordship.) What do you say about that, Mr. Walter ?

Mr. WALTER : There is not a single one that bears the word " tabloid."

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Mr. LEVETT : They were supplied in answer to a request for "tabloids."

Mr. NEVILLE : All we want from this witness is that he says they are not his manufacture. We do not go further than that at the present moment. A

Mr. Justice BYRNE : I only wanted to know what they were.

Cross-examined by Mr. WALTER.

193. When do I understand you commenced business in this country? —My firm was founded in 1878.

194. You originally came over here as agents for Wyeths ?—Not in B the ordinary sense as agents.

195. But you sold Wyeth's goods ?—It was an alliance or sort of partnership in which we shared the profits.

196. May I ask you again did you start business here selling Wyeth's Compressed Tablets ?—We sold products under the name of Messrs. C Wyeth, and registered the name "Wyeth" as a trade mark which was held by our firm.

197. I wish I could have a simple answer to my question. Did you come over here and commence business selling Wyeth's Compressed Tablets ?—We did. D

198. How long did you continue to sell those ?—I do not remember how long we continued to use the name Wyeth.

199. It was for some years, was it not ?—Yes, for some years.

200. Had you any trade marks at that time ?—We registered trade marks almost immediately after founding our business or at least identical E with it.

201. What trade marks were those ?—Those were compressed tablets.

202. Would you mind giving me the registration of any trade mark that you had for tablets prior to 1883 ?—I should be very pleased to give you any and all registrations. My solicitors have them. F

203. I should like to see any registration prior to 1883 of the word "tablet." Have you any ?—Yes, we have.

204. Prior to 1883 ?—Prior to 1883.

205. You have registered trade marks prior to 1883 ?—I think so. If G so you shall have what we have.

Mr. NEVILLE: If we have one you shall have it.

206. Mr. WALTER: Look at the "Trade Mark Journal" of 28th February, 1883, page 115. (Handing same to the Witness.) Was that a registration obtained by your firm ? (Put in and marked H.S.W. 35.) H —Yes.

207. Of the word "tablets" ?—Yes.

208. I believe you started warning the trade that any attempt to use the word "tablets" would be stopped ?—Yes. That is in connection with bi-convex compressed goods.

209. Just look at this. This is the Chemists and Druggists' Diary I for 1884, page 107. (Put in and marked H.S.W. 36.) Is that the warning : "We take this opportunity of expressing our most sincere

thanks to those members of the trade who have given us information which has enabled us to stop various piracies on our goods such as the use of the word 'tablets' in connection with compressed products," and so on. "Tablets" had been used for years by Wyeths?—Messrs. Wyeth A and ourselves——

210. Will you answer the question, please. Had the word "tablet" been used for years by Wyeths?—For several years, but not for many years.

211. Had it been also used by a numerous body of other persons for B compressed products?—No.

212. Did you or did you not threaten proceedings, amongst others, against Mr. Abraham and a Mr. Foster, for an alleged infringement of your trade marks by using the word "tablets"?—It is quite probable.

213. Did you carry out your threats of proceedings?—I do not C remember the name of either of those at the moment.

214. Did you abandon your trade mark "tablets"?—We did years afterwards.

215. You allowed your trade mark "tablets" to lapse?—We did afterwards. We were advised that it was not a strong mark.

D 216. Were you advised that you had no mark at all for it?—No, we were not.

217. Who invented the word "tabloid"?—I did.

218. Yourself?—Yes.

219. It was never suggested to you?—No.

E 220. Are you certain?—The probabilities are that some idea passed into my head.

221. No, are you certain?—I feel perfectly certain that no one ever suggested it to me.

222. It is a matter there can be no feeling about?—Certainly not.

F 223. Did you or did you not invent the word "tabloid"?—I invented it.

224. After it had been suggested to you?—No.

225. You had used the termination "oid" in your business prior to this?—I am not certain. I invented the word "" valoid" and "soloid," G and several other marks. "Valoid" I registered at the same time as I did "tabloid."

226. "Valoid" was much later?—No, it was registered at the same time.

227. You had used the word "ovoid," had you not?—We had used H it in conjunction with certain pills.

228. In 1882 you had used the word "ovoid"?—Yes.

229. In connection with McKesson & Robbins' pills?—Yes, and it is their trade mark to-day as "Ovoid Pills."

230. What is the meaning of "ovoid"?—I presume it possibly I suggests egg-shaped, but I will not say who did it. I did not invent the name; it is McKesson & Robbins' invention.

231. What is the meaning of the word "tabloid"?—The word "tabloid" means Burroughs, Wellcome & Co.'s products.

232. That is what we are fighting about. What is the meaning of the

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word "tabloid"?—The only meaning of it I know is the designation of Burroughs, Wellcome & Co.'s products.

233. We will just have a look and see. I wanted to pin you to that. You have told us that you advertise from time to time in "The Chemist and Druggist." Will you look at page 116 of the 1885 copy of "The Chemist and Druggist"?—Yes. A

234. There is this: "Pepsin in scales. The dose is from one to three grains, and is best given in powder or any other form of pepsin tabloids, which are one grain compressed tablets." There is nothing about trade mark or anything of the kind there. What is the meaning of the word tabloid there? Is it right that it means compressed tablets?—It means tabloid brand. B

235. Is there a word in that about tabloid brand?—The words "tabloid brand" do not appear here.

236. Is it true what it says there: pepsin tabloids which are one grain compressed tablets?—It is quite true, and it was our product manufactured by us. C

(Book put in and marked H.S.W. 37.)

237. Will you tell me when first in any of your advertisements there is the slightest reference to trade mark in connection with the word "tabloid"?—I cannot from memory give you the exact date, but I know that we referred to it in the course of years repeatedly. D

238. I agree? I shall be able to give you the date—to ascertain it.

239. Let me put this to you. In all the earlier use of the term "tabloid," it was used to mean the little compressed pellet of medicine and nothing else?—It was meant to mean—— E

240. Never mind what it was meant. It was, in fact, used to describe drugs put up in a particular form and in no other way?—Our make you mean?

241. Was it used in the way I have described to you?—— F

Mr. NEVILLE: Surely he is perfectly entitled to say that.

Mr. WALTER: You cannot tell me when first you used it in connection with the trade mark?

Mr. Justice BYRNE: In 1893.

Mr. WALTER: I know, my Lord. G

Mr. Justice BYRNE: I think that is the earliest I have got?

Mr. WALTER: Yes.

242. Mr. Justice BYRNE: You do not know whether it was before?—I do not. I will ascertain for your Lordship.

243. Mr. WALTER: I am quite content to take what you say; that you mean your goods, but the word "Tabloid" was used when first brought out to describe the actual articles themselves?—To describe our make and every chemist in the kingdom knows it. H

244. Was it or was it not used as a word to describe the article?—Our make only. I

245. You can add that afterwards, but was it used to describe the article?—Yes, as made by us.

246. Do you tell my Lord that the word "tabloid" as used now means to the public your goods?—Yes.

247. To the public?—We do not advertise to the public, but I believe the public know to-day that it is our goods.

A 248. The word "tabloid" has got into the dictionaries, has it not?—Yes.

249. It was in the Century Dictionary, was it not?—Yes.

250. Did you go to the Century Dictionary people and in the second edition get them to alter it?—I went to the proprietor and editor of the
B Century Dictionary, and they investigated the matter, and reported to me that they found it only referred to the goods manufactured by Burroughs, Wellcome & Co., and, therefore, in the revised edition of it they inserted that it was a registered trade mark

251. I think, if I remember aright, "Used as a trade mark," is what
C is described in the dictionary?—They undertook to insert the definition in any manner I desired.

252. It appeared in the dictionary in the ordinary way, to begin with?—Yes.

253. Let me now ask your attention to page 133 of the 1888 edition
D of the "Chemist and Druggist." (Same handed.) "The ~~Tabloids~~ of zymine (extractum pancreatis) afford the most convenient form for direct internal administration." You are using the word "tabloid" there as describing the form of the article?—As the method.

Tabloids

(Book put in and marked H.S.W. ~~32~~ 38)

E 254. You call it method. It suits you just as well.

Mr. Justice BYRNE: Let me look at that. (Book handed.)

255. Mr. WALTER: You registered various other trade marks for tabloids, I think, did not you?—I believe so. I have several trade marks.

F Mr. Justice BYRNE: Do you want to see this book?

Mr. LEVETT: When your Lordship has done with it I should like to see it.

Mr. Justice BYRNE: It is exactly similar to what I saw in the list. He describes the pepsin that he gets from Fairchild, and he describes the
G product that he makes out of that pepsin as "Fairchild."

Mr. LEVETT: I mean it is Fairchild.

Mr. Justice BYRNE: I have got "tabloid" in the supplement of Webster – the last edition, I see.

Mr. WALTER: I am going to bring your Lordship many instances.
H I should say I could go on from now till I do not know how long.

Mr. Justice BYRNE: This is quite a modern book; it is not in the original part of it, but it is in the supplement.

256. Mr. WALTER: Now would you look at the 1889 "Chemist and Druggist," page 128. You speak there of a dose of one or two
I tabloids?—Which paragraph?

257. I could not tell you the paragraph?—I see it: "Dose, one or two tabloids."

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258. That means take one or two of the little articles?—One or two of the little products, yes—our products.

(Exhibit put in and marked H.S.W. 39.)

259. Now I can go on repeating those. I will accept your addition, if you like, that you have always meant yours; but in the early years was not the word "tabloid" used constantly to describe the article—I grant you you say that it meant yours?—Descriptive of our articles. A

260. But it was constantly used to describe the article. You may make any mental reservation you like—understand that in all the cases I understand you add the sentence: "But it meant ours"?—It designated our product. B

261. But it also designated the product?—In a measure.

262. In a measure—in its whole essence, and everything it meant the product, did not it?—Not necessarily.

263. Never mind whether it did necessarily; it did in fact—that is so, is it not?—I do not agree with that view. C

264. You do not take that view?—No.

265. The general public do?—I do not think so.

266. What does a person mean when he goes in and asks for a tabloid?—He means Burroughs, Wellcome and Co.'s products. D

267. We will assume that, but does he want a liquid?—I presume not.

268. What does he want?—I am not aware of any tabloid product ever having been issued in liquid form.

269. I agree; no tabloid product has. Now, about 1898, you began to be a bit afraid of the spread of the word "tabloid," did you not?—No, we have always tried to spread it as widely as we could. E

270. I agree; but I am referring to the spread the public had, not you?—No, we have never advertised to the public.

271. Why did you adopt the word "brand" in 1898?—We were advised that that was a better form of designation, a better form of indication. We live and learn. F

272. Were you advised that up to that date you had never been using it as a trade mark?—No, we were not—never.

273. However, it is the fact that in 1898 was the first time you ever adopted the word "Brand"?—About that time I should say. G

274. May I take it that from that time onwards the profession and chemists have been deluged with literature warning them with all the pains and penalties of the law if they used "tabloid" in any way except in connection with you?—From even an earlier date, that would apply. H

275. You think so?—Yes.

276. Would you give me an instance?—Yes, we have issued special caution slips, certainly, for the last 10 or 15 years.

277. Indeed?—Probably even earlier than that.

278. We may be unfortunate, but we have not found them; but what I have put to you about "brand" was right; that was not adopted till 1898?—"Brand" was not adopted until somewhere about 1897 or 1898—I think 1897. I

279. It is impossible for me at the present time to get through all these books; I will try and get through some of them afterwards. In your early catalogue which you have put in—H.S.W. 1—which is dated August, 1885, there is nothing whatever about trade mark at all?—No,
A we were not troubled so much with questions—we had not as many questions of substitution in the early days as we have at the present time.

280. Let me put another explanation to you—you were using it as a name of the article?—No, it was used with our products.

B 281. I put it to you that there is not a solitary use of the word in this catalogue in 1885 except the description of a particular article as a tabloid?—It was used as our trade mark from the first.

282. Look at your book H.S.W. 1. Will you point out to me a single passage in that book where it is not used as a description of the
C article?—There are very few users of trade marks that do not use them without the "trade mark."

283. Is there any indication to be found there that it is a trade-mark? Look at the bottom of page 8 and read, my Lord, the passage at the bottom of page 8: "The compressed hypodermic tabloids are now
D prepared by an improved method. Our new machines enable us to graduate the pressure sufficiently to ensure cohesion and yet leave the tabloids in a highly soluble condition. They dissolve readily in a few drops of water upon being ground by the aid of a small glass mortar and pestle."

E 284. What is a tabloid there?—A tabloid is a product which is only manufactured by Burroughs, Wellcome & Co.

285. I expected that. What is it in its shape?—They have varied in shape very greatly.

286. What were they then?—I am not perfectly certain as to the
F exact shape. They have varied their shape. The shape has been varied very greatly—we have many different shapes of them.

287. Your early articles were chlorate of potash and chlorate of potash and borax. They were all in the shape of small compressed pellets somewhat rounded, were they not?—The first ones we used were
G very——

288. Mr. Justice BYRNE: Were they like *that* in shape?—The first ones we used were practically that shape.

289. The same you explain as the compressed tablets of Wyeth?——Yes, from time to time we varied that shape considerably.

H 290. Mr. WALTER: They have got a bit bigger some of them and some a little smaller?—And assumed various shapes.

291. Little variations in shape?—We have conical and various other shapes.

292. You told my Lord that you never made up into tabloids any
I other drugs than your own?—Oh, no, I beg your pardon.

293. I understood you to say that you have never applied the term tabloid except to goods of your own?—That is true—that is, of our own manufacture; that, is, the contents might be of other manufacture; for

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instance, in the case of Fairchild products, or ~~Byers'~~ Phenacetin, or other products of that kind.

294. Mr. Justice BYRNE: I suppose you do not make quinine?—Oh, yes, we do, my Lord.

295. Mr. WALTER: You make quinine yourself?—We make A quinine ourselves, and we also compress Howard's and other quinines.

296. I misunderstood you. I understood you to say you only put up your own goods?—Oh, no.

297. Now I want to come to another class of subject. You do not, of course, make up all drugs?—No; but we have a pretty large range, B most people think.

298. There are a large number of proprietary articles, are not there?—Yes.

299. What is a chemist to do, according to you, who receives an order for tabloids for goods which you do not make?—He can refer back C to the medical man if it is a prescription.

300. I am asking you to assume it is a proprietary article that you do not make and the chemist gets an order for tabloids?—He can refer back to the medical man to see what he wants.

301. What is he to do?—A chemist every day has erroneous D descriptions.

302. Supposing a person comes into a chemist's shop and asks for tabloids of phospherine?—He can explain to him that there is no such thing as tabloids of phospherine.

303. Then the unfortunate customer says, "But I bought them from E you only a week ago"?—I have had people declare to us that they had bought tabloids of certain products which they had not.

304. Let us bring this home. I have a list here of over 100 different articles which are not in your catalogue, and which are not stocked by you, for all of which I am going to produce the written orders for tabloids. F What is the chemist to do—you do not make the drugs and do not keep them? I am afraid that is not an explanation that should be expected of me.

305. Do you suggest that by those are meant your goods?—I do not know anything about those instances. G

306. Do you or do you not suggest that whenever the word "tabloid" is used your goods are meant?—I know nothing about those instances. If I did I might possibly be able to offer some explanation.

307. I will read you out a few of the lists so that you shall hear them —~~Parara~~ Parreira Brava—do you keep that—I have not the least notion of what H it is?—I do not know what the product is.

308. "Phosferine" do you keep?—No.

309. "Picric acid, 3?"—Picric acid we have prepared.

310. 3?—Picric acid, 3?

311. With the number 3 after it—do you keep it?—I do not think I we have.

312. "Lobelia 3," do you keep that?—No, those are homœpathic products.

313. I quite agree they are. What is the word tabloid? Does it as

applied to those mean your goods ?—The word tabloid is our word. I do not know enough of those instances—I have never in all my life heard of 1,000 cases as you suggest you have.

314. I never said 1,000, I said 100 ?—I beg your pardon.

A 315. For all of which I am going to produce written orders ?—Well.

316. Do you tell my Lord if that is the fact that the word tabloid means your goods ?—It would be an astonishing thing if it were a fact that there were so many——

317. I am going to produce a large number of these cases ?—I know

B it is a very unusual thing.

318. You think it is. Is ~~not it~~ true that the word tabloid is a word of every-day use now—meaning these small articles—it does not mean your goods at all ?—No. We have endeavoured to make it a word of every-day use.

it not/

C 319. "The Academy and Literature" is a fairly well known paper. I see the heading of a well known article is "Wisdom in tabloids"? —Yes.

320. Does that mean wisdom from Burroughs & Wellcome ?—We have not registered it in the class of "Wisdom."

D 321. You have registered it in the paper class ?—Yes, but the paper class is not always the wisdom class.

322. That, my Lord, is in the "Academy and Literature" for 22nd February, 1902, "Wisdom in tabloids." I see in "Punch" of the 4th March, 1903, "Opera in tabloid"?—Yes.

E 323. "Theatrical managers realising that this is the age of condensation have decided on grand opera in tabloid doses"?—We have not registered it in the opera class.

324. I see in "Nature" of April 23rd, 1903, page 580: "Yet we may question the advantage of compressing all our information into the tabloid

F form." I find again in "Punch" of the 29th April, page 305: "'Is it true, Mr. Wells,' we ask, 'that you are a convert to the tabloid dietary ?'" and so on ?—The fruits of our advertisements, I should think.

325. You think they are the fruits of your advertisements. Perhaps "Carmen in Tabloid," which is to be found in "Plays Musical and

G Otherwise," in the "Tatler" of May 20th, 1903, is also the result of your advertisement ?—I should think so.

326. I see again—"Punch" seems to be particularly fond of tabloid. —I see on 27th May, 1903, at page 362, under the head of "A Jumble Sale": The mental disturbance produced by the perusal of the three most

H imposing advertisements in 'The Times' of May 20: (1) Of the Encyclopædia; (2) of Somebody's Tabloids"—you think that is yours ?—I hope so.

327. "The Encyclopædia, of somebody's tabloids, an electric belt for producing a——" I see it has even become a verb now. The "Tatler"

I again of June 3rd, 1903, "It is many years since I saw Mr. Lawson in "Humanity," before he tabloided it in to a sketch ?—Yes, that is the fruits of our advertising.

328. Wonderful! Do you sell Anti-rheumatical Tabloids ?—We sell products for it.

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329. Called "Anti-rheumatical Tabloids"?—Not that title, but we have products for rheumatism.

330. I see that again in "Punch" of July 1st, 1903. "Next, you will kindly remember in turning to chemical topics, something surpassing the merits of anti-rheumatical tabloids." In the "Tatler" of July 15th, 1903 I see again "the tabloid melo-drama." In "Punch" again of July 22, "Molassoid tabloids (Lord Avebury's brand)." So I see there is another brand—the Lord Avebury's brand of tabloids?—We are not responsible for all "Punch's" jokes.

331. There are a large number here of others. Now to come down to much more practical things. You know the book called "The Practitioner"?—The journal called "The Practitioner"?

332. Vol. 39 in the year 1887. This is by William Murrell, "On Tablet Triturations," and he is describing a visit to the United States. Wyeth's preparations were tablets, were not they?—Compressed pills, compressed powders and tablets.

333. "During a recent visit to the United States I had the pleasure of making the acquaintance of Mr. John Wyeth of Philadelphia." Then he goes on: "I was pleased with his tablets and delighted with his fluid extracts," and so he goes on: "The first tablet to attract my attention was one containing a one-minim dose of tincture of aconite. These tablets are lenticular in shape, about the size of a split pea and weigh less than a grain each." I see he goes on: "The compressed tabloids have this great advantage over the method of administration usually adopted," and then he goes on: "The next compressed tabloid trituration employed contained one hundredth of a grain of perchloride of mercury"; and so on throughout a long article in this journal in 1887, a full description of tabloids in relation to the goods of Wyeth?—But Messrs. Wyeth never made tabloids.

(Put in and marked "H.S.W. 40.")

334. But they are describing the particular goods as tabloids in 1887?—And Dr. Murrell, when he went to America, took a letter of introduction from our firm to Messrs. Wyeth, and he explained to me afterwards that he confused our trade mark and the ~~tablet~~ Wyeth's tablet.

335. Anyway, whatever is the explanation there is, in the "Practitioner," a long article fully describing tabloids?—Yes, and when he refers in the end to tabloids the tabloids that he used were of our manufacture.

336. Wyeth's made them, did not they?—No.

337. Wyeth's did not make them?—Wyeth's made tablets, but the tabloids which he uses, and which he refers to at the end of his article, were manufactured by our firm; but he explained to me that he was confused in the titles.

338. There are a host of things there referred to which are not yours, and called tabloids?—It is purely a mistake—a confusion on his part.

339. I suppose the public are making a mistake when they ask for tabloids and they are not on your list. It is all a mistake?—Many people think we make products which we do not.

340. I had forgotten this point for the moment. You have not dropped the description——

Mr. Justice BYRNE: Dr. Murrell, as far as regards description, seems to have used tablets and tabloids interchangeably.

A Mr. WALTER: Absolutely, my Lord.

341. This is the "Chemists' and Druggists' Diary" for 1896. That is an advertisement of yours on page 180, is not it, Mr. Wellcome? —Yes.

(Put in and marked "H.S.W. 41.")

B 342. I see you speak there of the development of the tabloid system? —Yes.

343. What is the tabloid system?—It means the administration of our products.

344. Do you really mean to tell my Lord that the tabloid system C means the administration of your products? In what form are they to be administered?—In the various shapes and forms we make them; the idea of a very great compactness and an accurately divided dose.

345. "It is generally admitted by the profession and trade that by the development of the tabloid system we completely revolutionised the D method of administering medicine." Now what does that mean?—That means the unique accuracy of doses, the very great compactness, the convenience of having an accurately divided dose.

346. Do you think anybody reading that understood it as meaning anything else than the form in which the drugs were put up? E —I think they understood it precisely as we meant it in issuing it.

347. Look at page 201 of the same thing. "Soloids. Compressed form and material, intended for use as a powerful antiseptic and disinfectant. All are of a distinctive shape and cannot be mistaken for tabloids"?—Yes.

F 348. What does that mean. Was there a distinctive shape for tabloids?—We had prepared tabloids in many different shapes before that.

349. Was there a distinctive shape which enabled them to be recognised, so that people did not swallow the antiseptics?—We at first G prepared the soloid product only in that shape. Then we prepared tabloid and other things, and we designated those as products that were not to be taken internally, for instance photographic and other things, and antiseptic things, that were not to be taken internally, were made in a conical shape, both tabloid and soloid products.

H 350. Mr. Justice BYRNE: Did those that were made for outside use begin by being made for photographic use?—No, for external use.

Mr. Justice BYRNE: One might have rushed to the conclusion that "Sol" meant for photographic use.

351. Mr. WALTER: Now look at the "Chemists and Druggists I Diary" for 1898, page 244. There we have the actual drawing of the tabloid, have not we, in your own advertisement. (Put in and marked "H.W.S. 42.")?—That is one of the forms.

352. There is a drawing there the size of tabloid, and a comparison

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between the tabloid and the amount, the size, and what it would be if it was liquid?—Yes.

353. What does "tabloid" mean there?—That tabloid means one of the shapes in which the tabloid is made, and one of the most frequent shapes. A

354. At all events, that is a tabloid?—That is one of the shapes of a tabloid.

Mr. Justice BYRNE: "Tabloid tinctures"—is that the passage you mean.

355. Mr. WALTER: Yes, my Lord. He puts down there, "See illustrations, to indicate the difference of bulk between the tabloid and the same quantity of drug in liquid form." Then he gives the tabloid correlative sizes, and so on. (To the Witness): Just look at your advertisement in the Chemist and Druggist Diary, 1899. I see we now have "Size of tabloid product, page 244. This is about the time you took advice. (Put in and marked H.S.W. 43)?—We took advice on many occasions. B C

Mr. Justice BYRNE: What is the expression?

Mr. WALTER: "Tabloid product."

Mr. Justice BYRNE: You have in 1898 "tabloid brand products." D

Mr. WALTER: Under the picture your Lordship is looking at it is "size of tabloid."

Mr. Justice BYRNE: Yes.

Mr. WALTER: Then when we come to 1899 it is "Size of tabloid product." E

Mr. Justice BYRNE: Tabloid is on the top of the column.

356. Mr. WALTER (To the Witness): The "extra Pharmacopœia" is a well known medical work, is it not?—Yes.

357. This is the 1888 edition?—Is it Martindale's?

358. Yes, Martindale and Westcott. Just look at page 143. (Handed). That is "tabloid," is it not. (Put in and marked "H.S.W. 44")?—Yes, and refers exclusively to our product. We were the only makers of that product at that time. F

359. It is not described as yours nor has any reference to you?—That may be, but we were the only ones issuing it and advertising it at that time. G

360. It is referred to as a preparation without any indication of you whatever?—Not necessarily.

361. That is not a list of preparations. That is not a list of proprietory medicines?—I think you will find other proprietory articles. H

362. I have a specification here which comes next in order of date, of 1887 in which a Mr. Cornelius Wilson takes various things, forming them, or any of them, or any combination or mixture of them into tablets, lozenges of all kinds by whatsoever names called, such as pearls, pellets, tabloids, and so on. Do you suggest in 1887 the tabloid he was there referring to is the preparation of Messrs. Burroughs & Wellcome (Specification handed to Witness—put in and marked H.S.W. 45)?—I suggest he made a mistake here. He would not be allowed to make and issue them. I

363. I have a book by Gordon Stables on "Health and Beauty" in

1895 in which I see : " Fluid medicines should be discarded as much as possible if the chest is to be a travelling one and tabloids used instead " ? —Gordon Stables is an old customer of our firm.

364. This is really an advertisement of Burroughs & Wellcome ?—
A Not paid for.

Mr. Justice BYRNE : You cannot have this book marked. It belongs to a public library.

Mr. WALTER : So I observe, my Lord. I do not think it need be marked because the solicitors have agreed that those books were
B published.

Mr. Justice BYRNE : That in 1895 there was a book having a part called the " Little Medicine Chest," in which this passage is used.

365. Mr. WALTER : Yes, my Lord. In lighter literature " They call it Love," by Frankfort Moore, I see there are the " time-saving
C tabloids." Are those products of yours ?—I am afraid that is another gratuitous advertisement.

Mr. Justice BYRNE : That is a library book, too.

Mr. WALTER : Yes, my Lord ; it had better not be marked. The publication of this is admitted. There is a book called " Safety
D Cycling " in which they have made a mistake, too, because " Wyeth's tabloids " are recommended.

Mr. Justice BYRNE : What is the date of that ?

366. Mr. WALTER : 1895. " Wyeth's tabloids " are referred to ?—I have never met with this before, but as Messrs. Wyeths never made
E tabloids it is a curious mistake.

367. So we have heard, but they made things of the same shape which the public call generally by the same name ?—The public do not call them generally Wyeth's tabloids.

368. We shall see about that directly. I thought it was part of your
F case that you had not interested yourselves in the public at all ?— No. We do not.

369. Then what do you know about the public ?—We get to know something of the public mind.

370. Do you tell my Lord chemists have not told you constantly of
G the trouble they have when they are asked for tabloids, and they know your goods are not meant ?—Very rarely.

371. Very rarely ?— Very rare cases.

372. Have you seen this reference to Wyeth's tabloids ?—They are undoubtedly intended for ours, but having been associated for years with
1. Wyeth, there is confusion between Burroughs, Wellcome & Co. and Wyeth. We are still agents for Wyeth & Brother in this country. We were formerly partners, but we are now agents for them, and hold complete lines of their goods sold under different designations.

373. Mr. Justice BYRNE : There is a book here which I am
I afraid cannot be marked. It has been lent to us by the publishers. It is called " A reference book of practical therapeutics, by Dr. Foster. You know that ?—Yes.

374. It is a dictionary. This is the edition of 1897. It is a reference book of practical therapeutics by Frank D. Foster, M.D. " Tabloids :

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this is a synonym used in England to denote compressed tablets. Concerning the latter, see the article tablets." That is an error which should be corrected ?—That is an error which they have undertaken to correct.

(Book handed to his Lordship.) A

375. Mr. WALTER: I see you have got hold of Mr. Max Pemberton as well, at least I should gather so from this book: "The Impregnable City." On page 71 of "The Impregnable City," by Max Pemberton, I see there is this: "'I would do anything, she cried! keep me from that awful sleep and I will be as obedient as a child.' 'You would even take B some tabloids I will make up for you.'" This is in 1898. That is another gratuitous advertisement ?—Yes, and they refer to our products, because I know they have been prescribed for him, and he is an old personal friend of mine.

376. Mr. Justice BYRNE: It is not a very good advertisement ?—It C is quite unconscious. I had no knowledge of its appearance until afterwards. (Same handed to his Lordship.)

Mr. WALTER: I do not think they can possibly have referred to yours. Look at the passage afterwards.

377. Mr. Justice BYRNE: Do you think they refer to yours ?— D From a novelist's point of view you will find Kipling in a similar manner refers to the products not necessarily complimentary. He intended it to be friendly, I have no doubt. I was not aware of the appearance in the book.

378. Now I see the "Latin Grammar of Pharmacy." Why they E should have a Latin Grammar of Pharmacy I do not know. It is by Ince. The date is 1903. This is the last edition. It is in the earlier edition, but we have not been able to obtain a copy of that; 1898 was the first editior. It says: "Tabella, a tablet; tabella compresser, a tabloid"? —I have never met with that before. I was unaware of it. F

379. That must be stopped. I have some others here. I see that there is Samuel Butler, the author of "~~Erewhon~~ Revisited." I do not know what it is. It was published in 1901. May I ask whether you keep spiritual indigestion tabloids. (Book handed to Witness) ?—I should think he was drawing on his imagination in this. It is a novel. G

(Adjourned to to-morrow morning at 10.30.)

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
20th November, 1903.

BEFORE
MR. JUSTICE BYRNE.

Burroughs, Wellcome & Co.

—v.—

Thompson & Capper.

IN THE MATTER OF THE TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER OF THE PATENTS DESIGNS AND TRADE MARKS' ACTS, 1883-1888.

FIRST DAY.

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MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Plaintiffs' Solicitors.

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Defendants' Solicitors.

PRINTED BY GEO. BARBER,
FURNIVAL PRESS: { FURNIVAL STREET, HOLBORN; AND
CURSITOR STREET, CHANCERY LANE, E.C.
Tel. No. 1057 Holborn.

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
Saturday, November 21st, 1903.

BEFORE—
MR. JUSTICE BYRNE.

BURROUGHS, WELLCOME & CO.

— V.—

THOMPSON & CAPPER.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY, appeared on behalf of the Plaintiffs (instructed by Messrs. MARKBY, STEWART & Co.)

Mr. A. J. WALTER, and Mr. J. H. GRAY, appeared on behalf of the Defendants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

SECOND DAY.

Mr. HENRY SOLOMON WELLCOME, recalled.

Nov. 21, 1903

Mr. H. S. Wellcome

Cross-examination continued by Mr. WALTER.

Mr. WALTER: My Lord, in order to save the production of a large number of books I have adopted what I may call a tabloid form of
A extracts from them, which the Controller has certified. The books are here if they are wanted.

380. Do you know "Cassell's Dictionary," London, 1902?—Yes.

Nov 21, 1913

Mr. H. S. Welcome.

381. "Tabloid—English table, suffix oid. As adjective—resembling a tabloid; having the edges rounded; sub-angular." "This presumed *tabloid* condition"—quotation from natural science, February, 1898, page 112—'as substantive a troche'; used also loosely in the sense of tablet." What do you say to that?—Messrs. Cassell have undertaken to correct it. A

382. Foster's Illustrated Encyclopædic Dictionary, volumn 4, 1892: "Tabloid—a tablet." Have they undertaken to correct that?—I am not certain, but I think we have an undertaking. It is in the same form as the other Foster's Dictionary you produced yesterday. B

383. This is in 1892?—I think it is from the same publishers as the one you referred to yesterday.

384. "Standard Dictionary of the English Language 1895—Tabloid: *Pharm.*, a form of small tablet." Then in brackets: "Table, noun, plus 'oid'"?—They undertook to either remove the word from the dictionary or to place in it any definition that I chose. C

385. You do not think at all events that it had become common in the English language at this date?—They removed it from the dictionary.

386. They have added the note you told us of yesterday?—No; they have omitted it from the present edition. D

387. The Standard Dictionary have omitted it?—Yes.

388. Did you ask them to publish it as an advertisement of trade-mark?—No, not as an advertisement.

389. Did you threaten them in any way?—No threats whatever. They investigated it and found it was only applied to our products, and they omitted it. E

390. The "Century Dictionary," vol. 6, 1895. "Tabloid—table plus 'oid'; a tablet, a small troche, usually administered by the mouth or after solution hypodermically?—Is that all?

391. That is all?—I believe there is something more in that. F

392. I think you will find not if you look at the first edition?—The first edition, the one referred to yesterday.

393. Yes, the one that was published when everybody knew what tabloid meant?—Immediately it came to my notice I saw the proprietor and the editor, and he undertook to make an investigation, and he reported to me that he found it was only applied to the products manufactured by our firm. I have that from him in writing. G

394. You told him so?—No, he told me that he found that to be a fact, and therefore he undertook to either omit it from the dictionary or to insert——

395. Are you going to call the editor?—We cannot have what he says. He is in America. It is an American dictionary. H

396. "Encyclopædia Britannica," 1902, volume 21: "The next change observable after some hours is that the untouched cells below the cut grow larger, push up the dead surface, and divide by walls tangential to it, with the formation of tabloid cork cells." Are those yours?—I have not met with that reference before. I

397. I suppose your letter will follow in due course to the "Encyclopædia Britannica"?—That would be the usual course.

Mr. WALTER : Perhaps this copy of these extracts had better be marked. It is certified by the Controller. They want the dictionaries in the library, so they may go back, I suppose.

Mr. Justice BYRNE : Yes, they can all be sent for again if they are A wanted. Do you want to see the actual books, Mr. Neville ?

Mr. NEVILLE : Yes, my Lord. I should like to see them presently if I may.

(Copy extracts put in and marked H.S.W., 46.)

398. Mr. WALTER : I see in the " Tatler " again : " The curious B looking compound of a bath chair and bicycle is the latest development in what may be called tabloid motoring." Are those products of yours ?—I do not think we are responsible for all the jokes in the " Tatler."

Mr. NEVILLE : What is the date of your " Tatler " ?

Mr. WALTER : 18th November, 1903. I see in " T. P.'s Christmas C Number " for this year there is a long article.

Mr. Justice BYRNE : These are after action.

Mr. WALTER : These particular ones are, my Lord. I have a good many more of an earlier date, and I will just put one or two more of those to Mr. Wellcome. (To the Witness) : I see that in the " Daily Mirror," D of November 5th, 1903, a flat is called a " house tabloid."

Mr. Justice BYRNE : What is the context ?

Mr. WALTER : " We have all of us taken tabloids. I am beginning to think we shall be tabloids before long."

Mr. Justice BYRNE : Those must refer to these.

E Mr. NEVILLE : Unless they get their drugs from Messrs. Thompson & Capper.

399. Mr. WALTER : " We live in a flat, it may be, what is called a flat but a house tabloid. A staircase of flats is a bottle of tabloids representing a small street," and so on. Then I see postcards have been called F by the " Daily Mail " in a big heading " tabloid missives " ; ' tabloid correspondence," and so on. " Modern art in tabloids," I observe in the " Daily Express " of March 14th of this year, and " Opera in tabloids," in the " Sheffield Evening Telegraph." I see in the " Liverpool Daily Post " they say : " We overdo our daily tabloids, our physical exercise, G our games." That is yours, no doubt ?—I have no doubt it is the fruit of our advertising.

400. I suppose tabloids are only made by your machinery, of course ? —Quite true.

401. It is all wrong for the " Pall Mall " of May 6th, 1900, to speak H of " The tabloid, whether you make it by the Allen & Hanbury machine " —it is utterly wrong ?—I do not know what the Allen & Hanbury machine is, I am sure.

Mr. Justice BYRNE : There are some compressed things of Allen & Hanbury's, are there not ?

I Mr. WALTER : I am going to ask about them directly.

The WITNESS : I have no doubt if we had an Allen & Hanbury machine we could make tabloids.

402. Now I will ask you a general question. Until you have pointed

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out to these various people what you allege is their mistake, practically every one of the authors has treated it as an ordinary word in the English language ?—Oh, no !

403. You think not. Those are people to whom you have made complaints ?—No. A great many of them when tabloids have been prescribed for them knew they were taking tabloids, and they knew they were our products. The fact is, a great many people make the mistake.

Mr. Justice BYRNE : You do not refer to Webster, the one that is in Court. There you have a peculiar thing ; you have the original dictionary where it does not occur, and in the supplement in 1900 it does occur.

Mr. WALTER : It so happens, I have not got it, my Lord.

Mr. Justice BYRNE : It is in Court.

Mr. WALTER : I am obliged, my Lord. I will put that.

404. Mr. Justice BYRNE : They have not got as far as that in the "New English Dictionary." You have the suffix "oid." Your point may be to take it back a little earlier. (To the Witness) : The "Standard" is an American dictionary, is it not ?—Yes.

405. The "Century"—that is an American dictionary ?—Yes, my Lord.

Mr. Justice BYRNE : And the last part of the "Encyclopædia Britannica" has a good deal to do with America.

406. Mr. WALTER : Have you seen the supplement to "Webster's International Dictionary" ?—Yes, and we have an undertaking from them to correct.

407. That is another of the undertakings, is it ?—Yes.

408. "Tabloid—table plus oid—a tablet-like preparation of one or more drugs or chemicals" ?—That definition is entirely gratuitous. I mean that is without any knowledge of actually the source of the derivation.

409. You never used it in this sense ?—Never in any sense except to describe the specific manufacture of Burroughs & Wellcome.

410. What was the specific manufacture ?—A variety of products divided with unique accuracy and of exceptional quality.

411. That is what "tabloid" means ?—That is what "tabloid" means.

412. You never used it in the sense of a "tablet-like preparation of one or more drugs or chemicals" ?—It depends———

413. We will have your distinctions afterwards. Did you use it in that sense. Answer that yes or no ?—We did not use it in the sense to necessarily represent any particular shape.

414. Did you use it in the sense of "a tablet-like preparation of one or more drugs or chemicals" ?—It depends upon what your idea of the shape of a tablet is.

415. What is the shape of a tablet ?—All the dictionaries until quite recently designated it as a square.

416. A square ?—Yes.

417. Do you suggest, take first the shape as shown in your own pictures, this can properly be described as "a tablet-like preparation of one or more chemicals" ?—I do not quite follow you.

418. Take your pictures shown in a great many of your advertisements, would the use of tabloid in respect of that mean "a tablet-like preparation of one or more drugs or chemicals"?—I do not take it so.

419. The suffix "oid" is a very common one, is not it?—It has been
A common recently.

420. You suggest it is only a recent importation?—I do not suggest it is a recent importation, but the number of terms ending in "oid" has enormously increased in the last few years.

421. "Largely owing to the introduction into the English language
B of foreign words specially technical terms"?—I should say mainly due to the extensive advertising of the "tabloid" products.

422. You think so?—Yes.

423. You think that is the result of the advertisements of Messrs. Burroughs, Wellcome & Co., benefactors to the English language to the
C extent of the introduction of a large number of new words in addition to supplying the public with drugs?—The immense number of invented words terminating with "oid" the "Trade Mark Register" would show.

424. Cycloid is a pretty common word?—I am not very familiar with it.

D 425. Not cycloid?—I have seen it.

426. Do you know that was in the English language in 1661?—Perhaps so.

427. What about spheroid? Were you the benefiters of the public by the introduction of the word spheroid?—No.

E 428. Or rhomboid?—No.

429. Or conoid?—No.

430. Or ellipsoid?—No.

431. Or delphoid?—No.

432. Or crystalloid?—No.

F 433. Or colloid?—No.

434. Or celluloid?—No.

435. Or anthropoid?—No.

436. Or asteroid?—No.

437. I can string you out (only we will not trouble to go through it),
G I should think, about 1,000 words——

Mr. Justice BYRNE: Amongst the chemical words you have albuminoid, alkaloid, amyloid, colloid, crystalloid, metalloid, selenoid—the others were mathematical which you were reading—cycloid, ellipsoid, hyperboloid, rhomboid, spheroid, trapezoid. In anatomy adenoid,
H arytenoid—there is a collection under the suffix oid in the greatest authority we have now. It has not got as far as the letter dealing with this particular word. It gives the very word I mentioned yesterday, ovoid, that seems to be botanical. Have you seen this?

Mr. WALTER: No, I have not, my Lord.

I Mr. Justice BYRNE: If you want to have an examination, that is about the best authority you can have now. That is "Murray's Oxford Dictionary." Unfortunately it has not got as far as the letter which you deal with.

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438. Mr. WALTER: What is the meaning of the suffix "oid"?—It altogether depends upon the association of it, I presume.

439. Let me read you "oid" in the "Century" dictionary. "Greek oides"——

Mr. Justice BYRNE: What I have handed you is an English dictionary of the highest authority, that is better than an American dictionary. It is almost the last word for generations to come on the subject, I should think. A

Mr. WALTER: "Extensively used in scientific terms taken from Greek prototypes or formed on Greek words. These are primarily adjectives with the sense having the form or nature of resembling, allied to; but also (as sometimes in Greek) substantives in the sense of having the form or appearance of something related or allied in structure, but not identical. The substantives are especially numerous in mathematics." B C

Mr. Justice BYRNE: It shows there that rhomboid is the precursor.

Mr. WALTER: "Where in imitation of rhomboid approaching a lozenge (in shape, a rhomboid) and trapezoid having somewhat of the form of a table."

Mr. Justice BYRNE: It gives you the actual Greek words. D

440. Mr. WALTER: It does—rhomboides—rhomboid and trapezoidos too. Taking that meaning of the suffix, was not that what you intended when you called your articles tabloids?—To the best of my remembrance I had not the Greek œides in my head.

441. You had the English oid?—I was not seeking for any point of that sort. I was trying to create a pleasing word—a euphonious word and one that would be remembered. E

442. You took out two trade marks, Nos. 42378 and 42379 on page 210 of the "Trade Marks Journal" of the 4th March, 1885. I think your Lordship has those—those were handed in. Those were the ones with the lids. What is the meaning of tabloids?—I have no exhibit to show me. F

443. I ask you what is the meaning of the word tabloids?—Burroughs, Wellcome & Co.'s products.

444. Why plural?—Because they were divided doses. G

445. What?—It represented goods in divided ~~does~~ doses.

446. You tell my Lord that?—Yes.

447. That tabloids is plural because it means divided doses?—That is the particular characteristic feature of these products.

448. How does tabloids differ from tabloid in that respect?—I really do not recall the reason we had for using it. H

449. The plural of an invented word having no meaning? What do you mean by tabloids?—That designated our products.

450. But tabloid did that?—Yes.

451. Why did you put in tabloids?—I cannot give you for the moment the reason for adding the "s" in that trade mark. I

452. You cannot recall the meaning?—I cannot recall the reason for doing so. I presume there was some reason.

453. "Tabloids" when it was on the lid of a box meant a box containing tabloids?—Containing our products.

454. Containing tabloids?—Containing our products which we called tabloids.

455. Containing your products which you called tabloids?—Yes.

456. What did the world generally think was the meaning of the
A word tabloids?—Our products.

457. When you commenced to use them?—As soon as we made them known.

458. How is it all the dictionaries went wrong?—All the dictionaries have not gone wrong.

B 459. But they did till you corrected them?—Oh, no.

460. Can you recall to me a single dictionary in which tabloid has been entered as a trade term?—As a trade term?

461. Till you have corrected it?—Not necessarily as a trade term.

462. As a trade mark?—Trade marks are——

C 463. Tell me a single dictionary?—I do not know that——

464. Is there one?—I am not certain whether there is or is not, but I know that they insert other trade marks without saying they are trade marks.

465. Now let me come to another matter. When did you begin to
D sell photographic articles?—I do not remember. I think it is about 15 or 18 years ago. I am not certain of the date. I will ascertain.

466. It was some years ago?—It was many years ago.

467. Do you sell any agricultural chemicals?—I believe we have some products pertaining to agriculture.

E 468. What are they?—I do not recall for the moment—I will ascertain.

469. I should like to know?—I will ascertain for you.

470. Do you sell things for phylloxera or pernospora or other vine diseases or articles for disposing of blight?—We sell various antiseptics
F that would be useful in that direction.

471. "Burroughs & Wellcome's antiseptics for conservatories"—I would like to see a trade list with one of them. Have you your trade list?—There are some in the exhibits.

472. Point me out anything that you sell which is horticultural?
G —We also sell a great many things that are not in our price list.

473. You do. Tell my Lord do you sell anything agricultural. If so give us one?—I do not recall at the moment.

474. You do not recall anything?—I do not recall it—we issue thousands of articles and I cannot keep in my head all our products.

H 475. Do you sell anything for veterinary purposes?—Yes.

476. What do you sell for veterinary purposes?—A variety of things for that, but specially hypodermic veterinary products—I can produce specimens, if you wish.

477. Do you sell paper?—Oh, yes.

I 478. What sort of paper?—We sell paper in various forms. We sell fibre lint and various forms of paper.

479. Stationery, do you deal in?—We do not deal in it in a large way, but we have made sales.

480. Of stationery?—Yes.

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481. Do you sell perfumery ?—Yes.

482. What sort of articles ?—We sell various products of that sort.

Mr. Justice BYRNE : Are you getting copies of these printed notes ?

Mr. WALTER : Yes, my Lord. A

Mr. Justice BYRNE : I mentioned it because I was not taking a full note.

Mr. WALTER : I do not know whether your Lordship has been supplied with a copy.

Mr. Justice BYRNE : I have. That is what made me ask you, B because I have taken a much shorter note.

483. Mr. WALTER : I observe in some of your advertisements—your warning—there is "Add B. W. & Co., or B. & W. to orders" ? —Yes.

484. What is that for ?—Just the same as you sometimes fix a bolt on C a door as well as a lock.

485. That is the reason ?—It was simply as an additional precaution.

486. "Tabloid B. W. & Co.," or "Tabloid B. & W." is a perfectly well understood thing, is not it ?—It is sometimes employed as an extra precaution. D

487. Let me put it to you that in writing prescriptions the almost invariable practice of doctors in sending not to you, but to chemists, if they want your preparations, is to add "B. & W." ?—I should say that the far greater practice is simply to use the word tabloid.

488. A very large number use "B. & W." when they want your E goods ?—Medical men have informed us that they have done so occasionally.

489. You say it is occasional only ?—To put an additional safeguard.

490. You have given us a lot of information, or rather we have heard it—you have told us yourself, too—about the marvellous accuracy and all F that. The method you adopt is the well known laboratory method of obtaining equal quantities in small, very minute doses ?—No, I disagree with that.

491. To mix the things altogether in a large bulk, and then divide them—do you tell my Lord that is not a perfectly well known method G adopted in the laboratory for years ?—The manner in which we do it is of our own devising

492. There are other manufacturers of chemicals whose goods have repute in the market ?—Yes.

493. Messrs. Allen & Hanbury, for instance ?—Yes. H

494. They make up an enormous number of compressed goods ?—They make compressed goods.

495. And their preparations have a high reputation ?—I have nothing to say about the reputation.

496. Messrs. Park, Davis & Company are not an unknown firm ?— I True.

497. They also make these compressed goods ?—They make many compressed goods.

498. And also of high quality ?—I have nothing to say about that.

499. Also containing minute fractions of particular drugs?—They prepare small doses.

500. What did you mean by adding the term to your advertisements of recent years "Tabloid Product"? What is the meaning of it?—It
A was a choice of words—a choice of phraseology.

501. Were not you trying to shift the centre of gravity from "tabloid" as descriptive to "tabloid" as a trade mark?—I think that dates probably from the time we used the word "brand," and if you use "tabloid brand," I think you have to use some modified phraseology.

B 502. "Tabloid brand" had birth about the same time?—I think so.

503. And for the same purpose?—Not necessarily for the same purpose. One was in order to make easy phraseology, I think.

504. Easy phraseology; euphonious sound; pleasing to the ear; and pleasant to the taste?—Yes.

C 505. You put in an enormous book of labels. I glanced through them. It is labelled on the outside "tabloids," and is mark H.S.W. 13.

506. Mr. Justice BYRNE: I see you have some other brands. There is the "Wellcome" brand, I see?—Those are chemicals sold in the crystal form.

D 507. What is the "Dartring" brand?—That is a Lanoline product.

508. Is that one of your brands?—Yes.

509. Mr. WALTER: In that book you have got there a very large number of those labels have no "tabloid" on them at all?—Quite true.

510. But it is labelled outside "tabloids"?—Yes.

E 511. I put it that most of the labels have no mention of "tabloid" on them at all?—If you would allow me to explain, if you wish, these are for posting on to a cartoon that bears the word "tabloid" above it—if you would allow me to exhibit it.

512. But why is that book labelled outside "tabloids" when nearly
F every label inside it has not the word "tabloid" on it?—It means that these are "tabloid" product labels.

513. Tabloid products?—They are the labels for tabloid products.

514. Are not these the labels which are going to be put on the articles—"tabloid"?—Those are the labels which are going to be put on
G our products which we label "tabloids."

515. I gather from you that the medical profession knew from a very early date that "tabloid" meant your goods?—Yes.

516. Dr. Lauder Brunton is a pretty well-known doctor, is he not. He is Sir Thomas Lauder Brunton now?—He is very well known.

H 517. There was a correspondence took place in 1895, was there not?—What do you refer to?

518. About the use of the word "tabloid"?—Yes.

519. It is in the "Pharmaceutical Journal." Sir Thomas Lauder Brunton had used the term tabloid, and was taken to task by some people
J for using a trade mark?—Yes.

520. He wrote and explained himself to the "Pharmaceutical Journal" on page 791 of the number of the 9th March, 1895: "In your issue of February 9th your correspondent 'Galen' takes me to task for having used the word 'tabloid' in my article

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in the 'British Medical Journal' of February 2nd, and reprinted in the 'Pharmaceutical Journal' of February 9th. I regret that I was quite unaware that the word was a registered trade mark, and, as I found that in 'Martindale's Extra Pharmacopœia' seventh edition, mention is made at page 145 of Cocaine Tablets prepared with chocolate, and at page 148 of Tabloids of Hydrochlorate of Cocaine for hypodermic injection, I imagined, in my ignorance, that I should indicate the kind of preparation I intended more exactly by the word tabloid than by tablet." At all events at that date there seems to have been an impression abroad that tabloid was a word which described shape?—No. Sir Thomas Lauder Brunton was a constant prescriber of our products, and he explained to me that it was our products, he referred.

521. We shall hear him if he is going to explain.

Mr. NEVILLE: You cannot ask a question in cross-examination and then refuse the explanation.

522. Mr. WALTER: You know the Defendants very well, do you not?—I have never personally met them.

523. Your firm knows them very well?—Certainly.

524. They are one of your largest customers?—No.

525. They are large customers of yours?—In proportion to other accounts of ours, I should not call it large, I should call it a fair account.

526. I have a list here of some 50 or 60 articles which they purchase from you. Is that about right?—I am not surprised; it might be hundreds.

527. And also large dealers for you in photographic materials. This writ was issued on the 17th January, 1903. Do you know Mr. W. H. Sykes?—I do not.

528. Do you know Mr. Hooper?—No.

529. Or Mr. Davis?—No.

530. Or Mr. Ogden?—No.

531. Or Mr. T. Smith?—No.

532. Do you know any of the persons referred to in there?—No, none of them.

533. I observe that you began the purchasing, or somebody on your behalf, I assume, on the 30th August, 1902?—Yes.

534. And again in September, 1902. There were five purchasers in September?—Yes.

535. Was any communication of any kind made to the Defendants?—I am not aware of any.

536. Was the Writ issued without any correspondence of any kind?—I believe so.

537. Was that done on your instructions?—The matter was entirely in the hand of my solicitors at that time.

538. You knew nothing about it, or what do you suggest?—When it came to my knowledge that these practices were going on——

539. We will come to the practices in a minute. Let me put it to you that you set a series of traps?—I left it in the hands of my solicitors.

540. Did you, or did you not, give instructions to them for a series of traps to be set. Yes or no, did you ?—The matter of traps never entered my head. I never used or suggested the word traps.

541. You know what I mean. Did you instruct a series of orders to A be sent in ?—I instructed that tests should be made in regard to the matter.

542. I will take tests. I do not care whether you call them traps or tests. Your complaint is that as regards Cascara Segrada tabloids, in three instances Cascara Segrada tabloids were ordered from Messrs. B Thompson & Capper ?—Yes.

543. Is there a single bottle labelled "tabloids" that you have obtained from any of your traps or tests ? I will call them test purchases ? —The specimens will speak for themselves, but I do not recall any.

544. You do not recall one ?—I am not certain.

C 545. Are they all labelled "tablets" ?—I should have to refresh my memory in regard to the labels if you insist on that question. The specimens are in.

546. Can you tell my Lord whether or not there is a single tabloid label amongst them ?—I do not recall their being labelled, but I am not D at all certain about it. I have not attempted to charge my memory.

547. Look at it now ?——

Mr. NEVILLE : In no case is "tabloid" upon them. You may take that from me.

Mr. WALTER : Very well.

E 548. Then may I take it that beyond your knowing that your solicitors, according to your instructions, were making test purchases, you know nothing about this ?—I had nothing further to do with it.

549. Was it on your instructions that no letter was written before action ?—The question never arose.

F 550. The question never arose with you ?—No.

551. Do you think it was a right thing to do ?—I do.

552. That is your usual practice ?—If one felt certain that it was being done habitually.

Re-examined by Mr. NEVILLE.

G 553. In reference to what my learned friend has just been asking you about with regard to the tests which you ordered, I will get rid of that at once. Did you receive information of the existence of the substitution of other goods for your goods. I do not want you to tell me what it was, but did information reach you that other goods were being substituted for H your goods ?—Yes.

554. And was it in consequence of that information that you directed the orders to be given ?—It was.

555. And did you select Messrs. Thompson & Capper's shop arbitrarily, or had you information which led you to take the course that I you did ?—I had the information that it was——

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556. I do not want the nature of the information, but did you select Thompson & Capper's arbitrarily, or in consequence of information which you received ?—In consequence of information I received.

557. For the first few years after you registered your trade mark of "tabloid" had you any reason to suspect that substitution was going on ? A —Nothing within my remembrance.

558. Not in the early days ?—Not in the early days.

559. And subsequently we know that you did find instances where it was occurring ?—Yes.

560. Since then have you taken steps to emphasize the fact that B "tabloid" was your trade mark ?—Yes.

561. And you issued cautions and adopted fresh references to the word in your labels, and in your advertisements, and in your price lists ? —Yes.

562. Now my friend has told us, and you agreed to it, that there are C other firms who deal in divided doses of drugs, or compressed drugs, and he instanced two ; first, Messrs. Allen & Hanbury ?—Yes.

563. Now are you acquainted with their price lists ? Do they come before you ?—Yes.

564. Do they sell any products under the name "tabloid" ?—No. D

565. Have they ever done so ?—No.

566. Then Messrs. Park, Davis and Co. was another illustration. Do they sell any products under the name of "tabloid" ?—No.

567. Have they ever done so as far as you know ?—No.

568. Or ever attempted anything of the kind ?—No. E

569. I do not know whether you can tell me whether you have it in your recollection, but what do Messrs. Allen & Hanbury call their compressed medicines ? —Tablets, and I believe sometimes tabelli.

570. And do you know what Messrs. Park, Davis & Co. call theirs ? —I believe they now call them tablets. I think they called them some F other name, but I do not remember now what it was.

571. Now we have heard before that you deal with the trade, and advertise to the trade. Is that right ?—Yes.

572. Can you tell me whether your tabloids are always dispensed by the chemists under your name, and with your labels ?—No, very frequently G not. Very frequently a physician in the prescription directs that the word "tabloid" shall be written on the label, and the directions following without our name appearing on the package.

573. All your tabloids, as I understand—or at least, perhaps I ought not to put it in that way—are all your tabloids as consigned to the H chemists consigned under your mark of "Tabloid" ?—Yes, invariably ; we never sell them in bulk.

574. But are those tabloids always retailed by the chemist under the same mark ?—No, they are often dispensed in prescriptions without the mark. I

575. Do chemists put their own marks, or their own labels, on proprietory medicines that they have purchased ?—Very often.

576. And, of course, if they like to do so, you cannot prevent them ? —No.

577. And you never attempt to. That is a legitimate means of dispensing if the chemist chooses to do it?—I believe so.

578. At all events, that is the practice which they adopt?—Yes.

Mr. Justice BYRNE: Are you speaking of putting their name on it so as to obscure the other name altogether.

579. Mr. NEVILLE: Oh, yes, my Lord. So as to put it in another bottle or package. For instance, supposing a man gets a prescription with cascara tabloids as part of the prescription or annexed to the prescription, and he goes to the chemist to get cascara tabloids, the only cascara tabloids, if you are right, are those of your manufacture?—Yes.

580. But as they are delivered to the customer who has brought the prescription, does the customer necessarily know that they are of the make of Burroughs & Wellcome, or that they are tabloids?—He has not the means of knowing.

581. The chemist may dispense something under another title in fulfilment of the order?—Yes.

582. So that members of the public possibly might long have used tabloids without being made aware of the fact that they were of Burroughs & Wellcome's manufacture?—Yes, the same as a Kodak without knowing who made the Kodak.

583. Are all your warnings and advertisements addressed to the trade, and to the trade only?—To the profession and to the trade.

584. Yes, to the profession and the trade. How long has it been your practice to send these diaries to the classes that you have told us of, that is the doctors, the nurses, and the chemists?—I cannot remember exactly, about eight or possibly ten years.

585. From eight to ten years?—Yes, something like that.

586. I suppose you cannot give us specimens of the old ones?—I do not think so, I might possibly find some.

587. It would only be one you had by chance if one turned up so long after the year in which it was issued, I suppose?—Quite so.

588. Of late years have you been careful in those diaries to call attention to the fact of your trade mark, and to warn others against its improper use?—Yes, very specially.

589. And so far as your orders have been carried out that information would reach the hands of every known member of the profession, and every member of the trade, and the nurses. Is that right?—Yes, quite so.

590. Now a word about the "B. & W." You say sometimes from great caution the "B. & W.," or "B. W. & Co." is added to the prescription for the tabloid by members of the profession?—Yes.

591. You know of instances of that?—Yes.

592. And you know that it occurs rather frequently?—Yes.

593. And have you known instances where even that precaution has not been sufficient to prevent chemists from substituting other goods for your goods?—Yes, even when the full name of "Burroughs, Wellcome & Co." has been added.

594. I think we shall hear something about that in the present case?—We shall.

595. You have, you have told us, four trade names or trade marks

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having the termination of "oid"—one "Elixoid," one "Soloid," one "Valoid," and one "Tabloid"?—Yes.

596. With regard to "Valoid," did you register "Valoid" at the same time as you registered "Tabloid"?—Yes, at the same time.

597. What does "Valoid" apply to. I see it is registered in class 3? —It applies to concentrated fluid extracts.

598. Then "Soloid" is for external application only?—Yes.

599. Did that come later?—Yes, later.

600. Can you remember how many years later that was after 1884? —I do not remember, but it was some years after.

601. And "Elixoid," was that also some years later?—That was about the same time, I do not remember the date very well, but not far from the same time.

602. So that in 1884 you started with the "valoid" and the "tabloid" alone, and you added later "elixoid" and "soloid"?—Yes, I think that is the order.

603. Can you tell us what the "val" in "valoid" is?—No, I could not say.

604. Mr. Justice BYRNE: Not "Valentine." Was "Valentine's' meat juice known at that time?—I believe it was.

605. Mr. NEVILLE: And those two inventions took place at the same time, did they, the "valoid" and the "tabloid"?—Yes.

606. I must ask you some questions about the cases in which "tabloid" has been used as a verb, and as a substantive, and as a general indication of something small—compressed. Have you in any case, when your attention has been called to such a use of the word—or rather, to the use of the word in a manner which you considered inconsistent with your rights, ever passed a case over without communicating?—Never to my knowledge. We have been most diligent to watch over any ~~nuisance~~ misuse, and to have it corrected.

607. Take the "Century" first. You told my friend that you had been in communication with the editor, I think, when you found that he had put it in as a word of general use. Just look at that letter and tell me if that is the letter that you got in reply to your communication? (A letter was handed to the Witness.)—Yes.

608. Will you just hand that to my Lord, please?

Mr. WALTER: I suppose you are going to prove this in the ordinary way?

Mr. NEVILLE: I am going to prove that that was the letter that this gentleman got.

Mr. WALTER: We do not know where it comes from.

Mr. NEVILLE: Of course I am in my Lord's hands, but I submit in cross-examination on a matter of this kind this gentleman is entitled to say: "I wrote about that and I received this answer."

Mr. WALTER: I should like to see the gentleman to cross-examine him.

Mr. NEVILLE: I daresay you would, but the question is whether you are entitled to.

Mr. Justice BYRNE: Does it matter?

Mr. WALTER: I should have thought not.

Mr. NEVILLE: It is not of very great importance.

Mr. Justice BYRNE: What were the questions actually asked. He asked about it, and the witness told him that he complained—he got an undertaking, was not it?

A Mr. NEVILLE: Yes, I propose to put in the undertaking. Surely that is legitimate in re-examination.

Mr. Justice BYRNE: I do not see why. Why not?

Mr. WALTER: I have no doubt it is perfectly correct, but I do not

B know where it is from, X., Y. or, Z.

Mr. Justice BYRNE: Put it in *de bene esse*.

Mr. WALTER: If your Lordship pleases.

Mr. Justice BYRNE: It is not worth talking about.

Mr. WALTER: No, my Lord.

C 609. Mr. NEVILLE: I would not do it if I did not think it right, but I think I think I am entitled to from your own cross-examination. It is a short letter: "My dear Sir,—Referring to our conversation of yesterday in regard to the word 'tabloid' as used in the 'Century' Dictionary, I beg to say that the result of such enquiries as I have been able to make

D shows that the word is used here only as a proprietary name, in reference to the preparations of your house. We are quite content therefore to drop 'tabloid' from the next edition of the dictionary, or, if you prefer, we will retain it, adding to the definition a line to the effect that it is a proprietary word. We regret that the insertion has caused you any trouble, and

E trust that this statement may aid you to correct any misapprehension as to the use of the word here. Believe me, very truly yours, Frank H. Scott." Now, my Lord truly says this is not a matter I ought to insist upon to any great extent, but you have communicated in every case where you have found the word put forward as a word in common use?—Yes.

F 610. And is there any case where you can recollect you ever failed to get satisfaction?—Not one, and they nearly all attributed it to the "Century" Dictionary, I believe. Nearly all of them said that was their source.

611. We will have that in greater detail, but have you had search

G made both with regard to existing dictionaries and professional works as to the cases in which "tabloid" is referred to as a word in general use?—Yes.

612. And is it in a very small proportion out of the whole number that any such use has ever been made of the word?—Very rarely indeed.

H 613. And, as you tell us, when you have come across it you have communicated on the subject?—Yes.

614. Then I think I need not trouble further with that. Now, my friend put to you a very puzzling question, I suppose, ~~you~~ he thought. What was

I a chemist to do if he was asked for tabloids of a particular drug and he did not keep them. Have you sufficient knowledge of the trade to tell me?——

Mr. WALTER: I do not think I asked any such question.

Mr. NEVILLE: That is what I understood the purport of the

question to be: "What was a chemist to do if he was asked for tabloids of the particular drug you required?"

Mr. WALTER: That is it.

615. Mr. NEVILLE: That is what I meant to put before. (To the Witness): Do you know enough of the trade to tell my Lord what should a chemist do when he is asked for an article he does not keep? Should he say he does not keep it, or should he substitute somethingelse for it?—I believe amongst the trade it is almost a universal rule to refuse to supply or decline to supply what does not exist.

Mr. Justice BYRNE: You cannot quite shut out one's experience. What you suggest is that that would be the honest course for the chemist to take. That is what it comes to. It does not carry it further.

616. Mr. NEVILLE: I ought to apologise for the question really, because it is argumentative rather than getting any specific answer from him, but your Lordship knows what I mean. I will put it in this way: Have you any reason to doubt that there may be cases of people who require your make, or would like to get your make, of drugs which you do not deal in, which you do not supply?—Very frequently.

617. In which case, if you are right, they would ask for tabloids of that drug?—Many people think we make thousands of things we do not. They think we put up everything.

618. And, of course, the items you supply are limited?—Yes.

619. Just before we leave that question of the use of the word, I think as we have got this correspondence, we had better have all of it. This is on page 791, and it is signed by K. Lauder Brunton. My learned friend read this one. "Sir,—In your issue of February 9th, your correspondent 'Galen' takes me to task for having used the word 'tabloid' in my article in the 'British Medical Journal' of February 2nd, and reprinted in the 'Pharmaceutical Journal' of February 9th. I regret that I was quite unaware that the word was a registered trade mark, and as I found that in 'Martindale's Extra Pharmacopœia,' 7th edition, mention is made at page 145 of cocaine tablets," and so on. That is what my friend read. Now, my Lord, the letter that is referred to, taking Dr. Brunton to task, is to this effect. It is in the earlier number of February 9th, 1895, page 683. "'Tabloids' and the 'New British Pharmacopœia.' Sir,—In your contemporary, the 'British Medical Journal,' of February 2, a writer on pharmacology uses laudatory language in regard to compressed 'tabloids,' add says, 'it would be useful to have something of this sort in the new edition of the "Pharmacopœia."' Can the writer be aware that the word 'tabloid' is a registered trade mark of a firm of Americans, who can claim neither originality nor superior excellence for the manufacture of medicines compressed into this form, English houses having been makers of these for nearly 50 years to my knowledge."

Mr. Justice BYRNE: "Compressed into this form."

620. Mr. NEVILLE: "For the manufacture of medicines compressed into this form." "Is the English word 'tablet,' or its Latin equivalent, not expressive enough, that we need to have a word coined which is a hybrid of Latin and Greek? The use of even the word 'tablet' was challenged by them," and then he goes on. Now I want you

just to refer to that guard book labelled "tabloid" outside. I have not looked at it, but my friend says there are a great many labels in there which have not got the word "tabloid" upon them at all. That I take it is true?—That is so.

A 621. Is that true of all of them or only some of them?—Only some of them.

622. Most of them have the "tabloid" upon the label?—Yes.

623. Others have not?—Others have not.

624. What are those labels which have not got the word "tabloid"
B on them used for?—Pressed upon those outers that are on one of the exhibits.

625. Just take an outer and show his Lordship?—This, for example, is an outer. The outer is made without the centre, and one of these small labels bears the words "Trade Mark. Tabloid Brand," and beneath that
C is pasted the name of the drug. Therefore it has the trade mark "Tabloid Brand"—phenacetin, for example.

626. Does the guard book show a complete set of the labels used on the outers?—Yes.

627. And in every outer the trade mark "tabloid" appears?—Yes.

D 628. But in addition the complete set of labels is made up of sides and tops and ends, in some of which the word "tabloid" does not appear?—Quite so.

629. So that the book contains the complete sets of labels used on the tabloid boxes?—That is true.

E 630. There is no case in which those labels are used upon a packet which has not got the word "tabloid" upon it; is that right?—That is perfectly true.

631. Have you got a bottle of your manufacture; I want one of your own. (Bottle handed to the Witness.) Just look at that bottle before it
F goes down. Is that one of your own?—Yes.

632. Take one out of that bottle; do not screw the bottle up again. Have you got one out?—Yes.

633. Have you got it in your hand there?—Yes.

634. What do you call that?—I call that one of Burroughs, Wellcome
G & Co.'s tabloid products.

635. Put it short, what do you call that for short?—I call it "tabloid."

636. Now put another. What do you call those?—"Tabloids."

637. Does that in any way explain the registration that you have
H got in Germany and that you have got here?—Probably.

Mr. NEVILLE: We are quite agreed about that. There is no dispute about it.

Mr. WALTER: No.

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W. B. Davies.

WINIFRED BEVAN DAVIES, sworn.

Examined by Mr. NEVILLE.

638. Are you in the High School, Burlington Road, Altrincham ?—I am.

639. Do you act as clerk with Messrs Slater, Heelis, Williamson, Colley & Tulloch, solicitors, Manchester ?—I do.

640. Altrincham is just outside Manchester, is it not ?—Yes.

641. On their instructions did you, on the 10th September, 1902, go to the shop of Messrs. Thompson & Capper, 51, Piccadilly, Manchester ?—Yes.

642. Did you take with you a prescription that had been given you ?—I did.

643. Have you got that prescription ?—No.

Mr. Justice BYRNE : It is in the box that was handed in.

644. Mr. NEVILLE : Is that the prescription (Handing a prescription to the Witness.) ?—Yes.

645. I see there is a bit cut out of the corner ; was that cut out when you had it ?—Yes.

646. It was just like that when you took it down ?—Yes.

647. Was the stamp of Thompson & Capper on it when you took it down ?—No.

648. They put that on ?—Yes.

649. You went down with that prescription to the shop ?—Yes.

650. Did you hand it over the counter ?—I did.

651. To someone serving in the shop ?—Yes.

652. Just read, would you, what is on the paper—it is very short ?—" Tabloid potassia "—is it ?

Mr. NEVILLE : Give it to me. (Prescription returned to the learned Counsel.) " Tabloid potassii chlorati, B. W. & Co. One bottle of 40. When throat symptoms are threatened suck one of these. 8 September, 1902." The name at the top is " Capt. James." Just hand that to my Lord.

Mr. Justice BYRNE : This will be W.B.D. 2

Mr. NEVILLE : It is already marked, my Lord. If your Lordship does not mind it would be simpler to keep to that.

653. Was the person in the shop a man or a woman ?—A man.

654. Did he say anything ?—He said he would get me the prescription.

655. You handed him the prescription ?—Yes.

656. Did he give it to you there and then ?—No.

657. Was it arranged that you should call later for it ?—Yes.

658. Did you go later on in the day and call for it ?—Yes.

659. Did you get that bottle. (Handing bottle to Witness) ?—Yes.

(Exhibit put in and marked W.B.D., 1.)

Mr. NEVILLE : Your Lordship sees it refers to the prescription on the label.

Mr. Justice BYRNE : It was not exactly in this shape, because there is some sealing wax and a stamp on the seal.

660. That has been put on since ?—Yes.

Mr. Justice BYRNE: It has got a solicitor's name on it, so I gather that was not put on by the chemist.

661. Mr. NEVILLE : When you called later and got the bottle did they give you the prescription with it ?—Yes.

662. And with the stamp upon it that is there now—" Thompson & Capper." You shall see it in a minute when my friend has done with it ?—I believe so.

663. At all events, you handed it over as you got it ?—Yes.

Cross-examined by Mr. WALTER.

664. How many visits have you paid to Messrs. Thompson & Capper's ?—Four.

665. Did you take prescriptions in each case ?—No.

666. What were your other visits for ?—To see if I could identify the assistant.

667. When did you go ?—The first time, on the 10th September, 1902.

668. When did you go afterwards ?—I went a second time on the same day. I called again, last September, twice.

669. That is in 1903 ?—Yes.

670. Is that all that you have been ?—That is all.

671. Did you go to any other shops ?—Only to Thompson & Capper's.

672. They have two shops in Manchester ?—Yes.

673. Did you go to both or only one ?—I have been to both.

674. When did you go to the other one ?—I went this last September.

675. You went to both shops ?—Yes.

676. To try and identify him ?—Yes.

677. And did not succeed ?—I did not succeed.

678. I understand what was said to you was that nothing was said to you at all except that the prescription would be made up ?—I was asked if I particularly wanted Burroughs & Wellcome's, and I said yes.

679. Why did not you tell us that when my friend asked you ?—I am afraid I did not quite understand what he said.

680. Did you say " yes " ?—I said I wanted Burroughs & Wellcome's particularly.

681. Mr. Justice BYRNE : You did not say it in those words, did you ? As I understand you, he asked you if you particularly wanted Burroughs & Wellcome's ?—Yes, that is with regard to the tabloids.

Mr. WALTER : What tabloids are you referring to ?

Mr. Justice BYRNE : What is wanted first is what was said.

682. Mr. WALTER : Yes, my Lord. First of all, what did the attendant say ?—Nothing with regard to the prescription, but that he would get it for me.

683. Then was there another order ?—The tabloids.

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684. Another verbal order for tabloids ?—It was not verbal ; it was on a list of goods that I wanted to get.

685. We have not heard of that. Then there was an order—there was a prescription——

686. Mr. Justice BYRNE : Was there anything on the same occasion when you got this prescription ?—Yes. I had some tabloids to get.

687. Mr. WALTER : We have heard nothing about that at all—no suggestion made of anything of the kind. You called for some tabloids as well ?—I did.

688. There was a list. What was on the list ?—Various articles of no importance amongst which was tabloids.

689. Tabloids of what ?—Something for the throat.

690. The attendant did what ?—I asked for the tabloids and I asked for the prescription. I asked to take the tabloids then and there, but he said : " It will take as long to make the tabloids as it will to get the prescription."

691. " It will take as long to make them " ?—Well, to give me the tabloids, and then he said to me. " Do you want Burroughs & Wellcome's make particularly ?" I said " Yes." He said, "This will take as long as the prescription," so I said, " Very well then, I will call for it."

692. What happened then ?—I left the shop and called again.

693. When you called again what did you do ?—I received the tabloids and the prescription.

694. You did get Burroughs & Wellcome's tabloids ?—To my knowledge, yes.

Mr. Justice BYRNE : That is to say you got another bottle of tabloids besides *this*.

Mr. WALTER : Yes.

695. Mr. Justice BYRNE : I want to know what you mean. We know you got that bottle with the prescription ?—Yes.

696. Then did you get any other tabloids ?—Yes, for the throat.

697. Mr. WALTER : You got the tabloids you asked for, and those were Burroughs & Wellcome's ?—To my knowledge, yes.

Mr. NEVILLE : She means as far as she knows.

Mr. WALTER : At all events we have no complaint in this case.

698. Mr. Justice BYRNE : You mean as far as you know ?—As far as I know.

699. Mr. WALTER : You made an Affidavit in this case ?—Yes.

700. Why did not you mention the tabloids before ?—I believe it is mentioned.

701. No. Let me read your affidavit. This was made on the 19th January last year. " Upon the instructions of my employers I went on Wednesday, the 10th day of September, 1902 at or about 11.30 in the morning to the shop of Messrs. Thompson & Capper, at 51, Piccadilly, Manchester aforesaid, and there saw an assistant behind the counter. I handed to him the prescription now produced to me and marked W.B.D. 2. He inquired whether I wanted Burroughs & Wellcome's make. I then left the prescription with him to be made

up, and said I would call again for the article." You do not say there that you said you wanted Burroughs & Wellcome's make——

Mr. Justice BYRNE: Yes, she does. "And I informed him that I required Burroughs & Wellcome's make."

A Mr. WALTER: It is left out of my copy.

Mr. Justice BYRNE: That is just why I should like to see the office copy.

702. Mr. WALTER: Yes, it is left entirely out of my copy. (To the Witness): That statement was not made with regard to the prescrip-
B tion at all, but with regard to the voice lozenges?—It was made with regard to the whole.

703. Which do you mean? You told us a moment ago nothing was said about the prescription, but that when you asked for tabloids he said: "Do you want Burroughs & Wellcome's make." Do you want to change
C that now and say that the remark applied to the two?—I handed in the list with the tabloids on and the prescription.

Mr. Justice BYRNE: You handed in this list? I really do not understand you.

704. Mr. WALTER: Which did you hand in first—the prescription?
D —Yes, I asked for it to be made up.

705. Then nothing was said about that at all?—No.

706. Then you handed in a list on which were some tabloids?—Yes.

707. Mr. Justice BYRNE: Is that right?—Yes, quite right.

708. Mr. WALTER: Then he asked you whether you wanted
E Burroughs & Wellcome's make?—Yes.

709. You said "yes"?—Yes.

710. And so far as you know you received Burroughs & Wellcome's?—Yes.

711. You got of course two bottles?—I believe it is a little tin box.

F 712. Two bottles and a tin box?——

713. Mr. Justice BYRNE: No—one bottle and a tin box. One bottle with a prescription and a tin box with these other things?—Yes, I believe it was a little tin box.

714. Mr. WALTER: Are you certain "B. W. & Co." was on this
G this prescription when it was handed in?—I do not know.

Mr. WALTER: I asked that, my Lord, because we have a copy of the prescription in our books. (Handing copy to ~~your~~ his Lordship.)

Mr. NEVILLE: I should like to see that.

Re-examined by Mr. NEVILLE.

H 715. Do you know precisely who it was who gave you this prescription to take to the shop?—Slater Heelis gave it to me.

716. Do you remember what clerk it was, or was it one of the partners?—Yes, I remember.

717. Who was it? I want to know the name, because you say you
I cannot remember precisely what was in the prescription. It was given to you, you took it down, and handed it over. I want to know whether you can remember if it was a member of the firm or a clerk?—It was a

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member of the firm, but I cannot think of his name though I know him quite well.

718. I daresay I can find out from another source ?—"Porter" is the name.

719. You took this down and handed it to the man behind the counter ?—Yes.

720. Did you say anything with reference to this prescription ?—I asked him to make these prescriptions up.

721. Then the other list asked for voice tabloids ?—It did.

722. Did you get back the bottle that you produced with this prescription ?—Yes.

723. And you handed them back to somebody belonging to the firm ?—Yes—Slater Heelis.

724. Now just a word about the attendant. You afterwards visited the shop with a view to identifying the man who served you if you could ?—Yes.

725. You could not do it ?—I did not see him again.

726. Could you have recollected the man if he had been in the shop—do you think you could have recognised him ?—Yes.

727. Have you a distinct recollection of his appearance ?—I believe so.

728. Are you satisfied he was not there when you visited the shop on the 10th September last—not in the two shops ?—I did not go on the 10th September last.

729. In September last ?—Yes.

730. You did go in September last to see if you could recognise the man who served you on the 10th of September, 1902 ?—I did not see him.

731. Had you forgotten what he was like or had you a clear recollection of what he was like ?—I had a clear recollection of what he was like.

733. You could not see him ?—No.

Mr. Justice BYRNE : You had better put these up in an envelope together again.

Mr. NEVILLE : If your Lordship pleases.

Mr. T. Smith.

Mr. THOMAS SMITH, sworn.

Examined by Mr. LEVETT.

734. I think you live at 53, Clarence Street, Broughton, Manchester ?—That is so.

735. You are an articled clerk to Messrs. Slater, Heelis & Co. ?—Yes.

736. On the 12th of September did you in consequence of instructions given to you go to the Defendants' shop at 51, Piccadilly ?—I did.

Mr. Justice BYRNE : The 12th of September in what year ?

737. Mr. LEVETT: Last year—1902. Did you take with you any list? —I did.

738. Just open that envelope and see if that is the list you took with you?—Yes, that is the list.

A 739. Just read it: "12th of September, 1903. Get watch; 'Temporal Power' (Marie Corelli). Small bottle cascara sagrada tabloids B. W. & Co. Tobacco." Is that right?—Yes.

(The list was put in and marked T.S. 2.)

740. When you went in did you see an assistant?—I did.

B 741. Can you describe him in any way?—Yes, he was young, about 23, sandy complexion. He had glasses on—a fresh complexion.

742. What did you say to him?—I told him that I wanted a bottle of cascara, and then I stumbled over the pronunciation of the word "sagrada," and said "tabloids"—and I then said, "This is what I want," and gave C him the list.

743. What did he say then?—He said, "Oh, yes."

744. What did he do then?—He then came from behind the counter, and went to a case, which was behind where I stood, and asked me whether I wanted a 1s. bottle or a 1s. 9d. I said I would have a 1s. D bottle.

745. What did he do then?—He then took a bottle from the case and made it up and handed it to me, and I gave him a 1s.

746. Mr. Justice BYRNE: Do you mean he wrapped it up?—He made it up.

E 747. Made it up how?—He wrapped it in paper.

748. Mr. LEVETT: Have you got that bottle?—Yes.

(The bottle was put in and marked T.S. 1.)

749. What about the piece of paper; what did he do with it?—He gave that to me as well.

F 750. Did you see whether he read the paper when he had it in his hand or not?—Certainly he did.

751. Did anything further pass between you or did you leave?—Nothing further.

752. Did you in August last go to the shop and see if you could G identify him again?—I did.

753. Was he then in the shop?—No, he was not.

Cross-examined by Mr. WALTER.

754. Did you pay any other visits?—No others other than for the purpose of identification.

H 755. Nothing else. Other visits were made by other clerks, were they?—I believe so.

756. This was the ordinary "pennyworth of soap and twopenny-worth of something else" order—it was the ordinary trap order?—That is what was given to me.

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Mr. T. Smith.

757. You knew what you were going for ?—I knew I was going for tabloids.

758. You knew you were going for tabloids. You got a bottle labelled "Compressed tablets"?—I did not know at the time what I got.

759. Do you suggest he did not hand it to you ?—I got it, but it was wrapped up.

760. Did he hand this to you ?—Certainly, he did.

761. Unwrapped up ?—No, wrapped up.

762. You never saw it at all ?—I never saw the label on the bottle or the bottle itself, it was in paper when handed to me.

763. He came round the counter, went to the case and fetched it ?—Yes.

764. You say you never saw the bottle at all ?—Never.

765. Tell us exactly what you said to him when you went into the shop ?—I said I wanted a bottle of cascara. Then I stumbled in the pronunciation of the word segrada.

766. Mr. Justice BYRNE: You purposely stumbled ?—I purposely stumbled. Then I said "Tabloids."

767. Mr. WALTER: Did you stumble over that ?—No, I did not.

768. That you brought out with a good round emphasis so as to impress it on him ?—That I said quite clearly.

769. What did you stumble over "segrada" for ?—That I might hand him the list, so that he might know clearly what I wanted.

770. Why was there any necessity to stumble over "segrada" and not "tabloids," so that you could hand him the list ?—I do not know that there was any particular reason.

771. You did not let him know whether it was tabloids or tablets you wanted ?—Yes, I did.

772. The stumbling ceased at "segrada" and you became as clear as daylight again at "tabloids" ?—Yes.

773. Knowing you went there for the purpose of trapping the man to supply tablets for tabloids—that is what you went for ?—I went there for the purpose——

774. That was what you went there for ?—I was asked to go for tabloids.

775. You wanted to get tablets ?—I do not know that I did.

776. Do you tell my Lord you do not know ?—I was asked to go and buy a bottle of tabloids.

777. Do you tell my Lord that you did not know ~~the~~ tablets were being sold at Thompson & Capper's as ~~tablets~~ Tabloids ?—I had heard so.

778. You had heard so before you went. You ask my Lord to believe that you emphasized "tabloids" and stumbled over "segrada" ?—I do.

779. Are you often employed on these trapping expeditions ?—No, I am not.

780. Have you ever been before ?—Never.

781. Or since ?—Not since.

782. In other matters ?—None at all.

783. You knew the look of the bottle when he took it out of the case, of course?—No, I did not.

784. You were very pleased, were you not?—I knew nothing about it.

A 785. You knew that they sold bottles labelled "tablets"—Not of my own knowledge.

786. You had been told so?—I had been told so.

787. How long did he have this document?—He had it with him whilst he walked round from behind the counter to the case.

B 788. You suggest he read it?—Yes, I do.

789. What did he want to read it for?—When I gave it to him he looked at it.

790. He saw cascara segrada, which you had asked for?—Probably he did.

C 791. You suggest that he studied this?—I suggest that he read the whole order.

792. Do you suggest that he read the whole of the order, do you?—I do.

793. He knew at once what you wanted when you asked for segrada?

D —He looked at the list and said "Yes."

794. There was no prescription, or anything of the kind—nothing was copied?—There was nothing except the list.

795. He copied nothing?—No.

796. There was nothing to be entered at all?—No.

E 797. It was an ordinary cash transaction?—A cash transaction purely.

798. And with the stumble over the word "segrada" and nothing over the word "tabloids"?—Certainly.

799. You went deliberately knowing you wanted to get tablets?—

F No, I went——

800. To get tablets, did not you? Did you, or did you not, go to get tablets?—I went to get a bottle of tabloids.

801. Did you or did you not go to get tablets?—I did not know what I was going to get.

G Mr. FREDERICK GEORGE HOOPER, sworn.

Examined by Mr. SEBASTIAN.

802. Do you live at Chorlton, near Manchester?—I do.

803. Are you a clerk to Messrs. Slater, Heelis & Co.?—I am.

804. On Thursday, the 4th September, 1902, did you go to the

H Defendants' shop at Picadilly, Manchester?—I did.

805. Was that in accordance with the instructions you had received from your principals?—Yes.

806. Did you take anything with you?—Yes.

807. What was it?—I took a list.

I 808. Would you know it again if I show you ~~one~~?—Yes.

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Mr. F. G. Hooper.

809. Will you look at that list which is marked F.G.H. 1, I think? (Handed.)—Yes, this is the list.

810. You recognise that list?—Yes.

811. Is that the list that you took with you to the shop?—Yes.

812. That contains, among other things, an order for cascara tabloids, I think?—Yes.

813. When you got to the shop what did you do?—I simply pointed to the words "cascara tabloids," and asked them to supply me with them.

814. You say you pointed out the words?—Yes.

815. Did you point those out to the man who was serving in the shop?—Yes.

816. Can you describe that man, if necessary?—A gentleman of between 40 and 45, with a dark beard.

817. Did you ask him for anything?—No, not by word of mouth. I simply pointed to the words.

818. What did he do?—He took the list behind the counter, and brought me a packet, but not the list.

819. What was the packet?—I could not see until I got back to the office.

820. When you got back to the office did you look to see what was in the packet?—Yes.

821. What was in the packet?—Compressed tablets of cascara sagrada.

822. Was it a tin box or a bottle?—A bottle.

823. Can you identity the bottle? (Handing same.)—Yes, this is the one.

824. Was it handed to you wrapped up?—Yes.

825. And you did not know what was in it until you got back?—No.

826. You say he did not give you the list at the same time?——

Cross-examined by Mr. WALTER.

827. You are a clerk in the employ of the solicitors too, I see?—Yes.

828. You knew what you were going for?—Yes.

829. You had been told that Messrs. Thompson & Capper were selling cascara sagrada compressed tablets. You knew that?—No, I did not know it.

830. You did not know that they sold cascara sagrada compressed tablets?—No.

831. What did you know?—I knew that they were chemists, that is all, and were supposed to sell them. No.

832. Did you ask for it?—Yes.

833. Was it returned to you?—Yes.

Mr. Justice BYRNE: When?

834. Mr. SEBASTIAN: When? Was that after he had handed you the bottle or before?—After he had handed me the bottle.

835. Did you take the packet and paper and come back again ?—Yes.

836. Was there any conversation beyond that which you have mentioned ?—No, none.

A Mr. Justice BYRNE : Let me look at that.

(Packet handed to his Lordship.)

837. Supposed to sell what ?—Tablets.

838. Have you paid other visits ?—No.

839. You have never been near the place again ?—No.

B 840. Either of the shops ?—No.

841. Was anything said to you ?—No, nothing.

842. Not a word. It was a kind of dumb show business ?—Exactly.

843. Did you ask for anything ?—No.

844. Mr. Justice BYRNE : Except the way you did it ?—The way I C pointed out on the list.

845. Mr. WALTER : What did you point out ?—Cascara tabloids.

846. I see books, sugar, pencils, cascara tabloids, and stamps. I assume you did not buy any of the other articles ?—No.

847. Mr. Justice BYRNE : What did you say : "Will you give me D this," or did you point to it ?—I simply said "I want this."

848. Mr. WALTER : You said nothing at all ?—Not beyond that.

849. What did he do ?—He brought me the packet without the list.

850. Where did he go and get it ?—From behind the counter.

851. He did not come round the counter this time ?—Yes, he came E out to give it to me.

852. I thought you said it was behind the counter. He came round to the front of the counter, did he ?—He came opposite myself from behind a partition.

853. And brought out this bottle ?—Yes.

F 854. Did you see it ?—No, it was wrapped up.

855. Did you see it wrapped up ?—Yes.

856. You saw it before it was wrapped up ?—No.

857. But you saw it being wrapped up ?—No.

858. Mr. Justice BYRNE : Was it wrapped up behind the partition ? G —Yes, my Lord.

859. Mr. WALTER : Having no further use for language you went out ?—Yes.

860. Did you look in ?—No.

861. Took it back to the office ?—Yes.

H 862. I suppose there was rejoicing ?—Yes.

863. You are quite certain you said nothing beyond taking the list and saying you wanted this. Did you carefully put your thumb over the "tabloids" for instance ?—Yes.

Mr. Justice BYRNE : Yes, but not in the sense you mean.

I 864. Mr. WALTER : Did you put your thumb over "tabloids" ?—No, I put it opposite to it.

865. Which did you do, did you cover up "tabloids" ?—I could not say.

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Mr. F. G Hooper.

866. I ask you deliberately. Did you cover up the word "tabloids"? —No.

867. You said just now you did not know. Which do you mean?—I do not know where I put my finger on the list. As far as the words are concerned, I put it opposite somewhere.

868. Mr. Justice BYRNE: You said just now that you put your thumb over the word. What do you mean by that?—Opposite.

869. Do you mean that? Do you mean opposite?—Yes, opposite.

870. When you said "over" you meant opposite?—Yes.

Re-examined by Mr. NEVILLE.

871. Did you intentionally cover up the word "tabloid," or conceal the word "tabloid," from the eye of the man to whom you handed the list?—No.

872. What did you intend to do when you put your finger on the paper?—Just to indicate what I wanted.

873. Did you retain the list after you had shown it, or did he take it away with him?—He took it away with him.

874. And when he first brought back the packet the list was not with it?—No, it was missing.

875. And on your request he gave you the list;—is that right? —Yes.

876. And then you took them both away?—Yes.

A. Ogden.

AMY OGDEN, sworn.

Examined by Mr. KERLY.

877. Do you live at 7, Mellor Grove, Cornbrook Street, Old Trafford? —I do.

878. And you are a machinist?—Yes.

879. On the 12th of September, in the afternoon, did you go to the shop 30, Deansgate?—I did.

880. On some one's instructions?—Yes.

881. Had you instructions from some one?—I had a list from some one, yes.

882. Who gave you the list?—Mr. Sandbach.

883. Did you take the list with you?—Yes.

Mr. Justice BYRNE: Have you gathered the name?

884. Mr. NEVILLE: Was it some one from Slater, Heelis & Co.? —Yes.

Mr. NEVILLE: We admit it was on the instructions of the solicitors.

885. Mr. KERLY: Is that your list. Look at it (handed to Witness)?—Yes.

(List put in and marked A.O. 1.)

886. What did you do with the list?—I gave it to the gentleman, and said I wanted a small bottle of chlorate of potash tabloids.

887. Mr. Justice BYRNE: Anything else?—No, I did not say anything else. He handed me back the list.

A 888. With anything?—No.

889. Mr. KERLY: What did he do then?—He got them for me.

890. Gave you back the list first?—Yes.

891. Then he got something. Have you got the thing there which he gave you?—Yes.

B 892. He gave you that? (Packet handed to Witness.)—Yes.

893. You paid for it?—Sixpence.

894. Was anything else said?—No, nothing.

(Put in and marked A.O. 2.)

Cross-examined by Mr. WALTER.

C 895. Did you know anything about what you were going for?—No, I did not.

896. You asked him for chlorate of potash tabloids?—Yes.

897. That is all you know about it?—That is all I know about it.

898. Was it wrapped up when you got it?—Yes.

D 899. You got some compressed chlorate of potash pellets?—Yes.

FLORENCE HEAP, sworn.

Examined by Mr. NEVILLE.

900. Do you live at 19, Worthington Street, Brooks Bar. Manchester?—I do.

E 901. Do you remember receiving certain instructions from somebody at Slater, Heelis & Co.'s?—I do.

902. On the 13th September, 1902?—Yes.

903. Were you given anything?—I was handed a prescription.

904. Will you look and see if you can identify the prescription they F gave you?—This is it.

(Exhibit put in and marked "F.H. 1.")

905. Did you go to the Defendant's shop, 39, Deansgate, Manchester?—Yes, I did.

906. To Thompson & Capper's shop?—Yes.

G 907 Did you take that prescription with you?—I did.

908. Who came forward and served you, or who was there to serve you?—One of the assistants came to me to serve me, and I handed him——

909. Was he a man or a woman?—He was a man.

H 910. I ought not to have put it to you in that way, but were you served by a man or a woman—was it a young man?—By a man, yes.

911. Can you recollect his appearance?—Yes.

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912. Did you know him before. Had you seen him before ?—Never.
913. Would you know him again ?—I am not sure.
914. Just tell us what he was like—as far as you can recollect ?—He was rather tall and rather dark, with a slight moustache—I should say about 27. A
915. A youngish man, tall and dark, and with a light moustache ?—A rather slight moustache.
916. Now just tell my Lord exactly what happened when he came to serve. What did you do ?—I handed him the prescription over the counter and asked him if he would make that up. He asked me if he B could send it. I said: No, I could call again, so he asked me if I could give him one hour to make it up and I said "Yes."
917. Did you go away ?—Yes.
918. And called back in about an hour ?—I called back in one hour.
919. Just tell my Lord what happened then when you came back ?— C When I went into the shop the same assistant was serving somebody else, and a small boy came to me. I asked him if it was made up, so he went to the assistant, and he pointed it out to him on the counter. The boy handed it to me, and I came away.
920. What was it ? Was it a made-up packet that was handed to D you, or what ?—It was a made-up packet.
921. Was the prescription inside the packet or outside the packet, or was it there at all ?—It was there.
922. Inside or outside ?—I could not say whether it was inside or E out, but I had it.
923. You carried whatever was given you back to Slater, Heelis & Co., did you, and handed it over to them ?—Yes.
924. Did you see the thing that the packet contained after you got to them ?—Yes, I did.
925. Have you got it there ?—Yes. F

(Exhibit put in and marked F.H. 2.)

926. Did you pay for it over the counter ?—Yes, I did.
927. Mr. Justice BYRNE: He told you it would take an hour to make this up ?—Yes.

G

Cross-examined by Mr. WALTER.

928. Had you been any other times ?—No, never.
929. Never been there before or since ?—No.
930. Did you know anything about what you were going for, except to take this prescription ?—No, I did not.

H

Mr. J. H. Bradburn.

Mr. JOHN HENRY BRADBURN, sworn.

Examined by Mr. LEVETT.

931. I think you live at 6, William Street, Didsbury, near Manchester? —Yes.

932. You are a clerk with Messrs. Slater, Heelis & Co. ?—Yes.

933. Did you on the 2nd October last year go to the Defendants' shop under Messrs. Slater, Heelis & Co.'s. orders ?—Yes.

934. That was the shop at 51, Piccadilly ?—Yes.

A 935. Did you take with you a prescription ?—Yes.

936. Is that the prescription you took ?—Yes, this is the one.

(Exhibit put in and marked J.H.B. 1.)

937. Whom did you see when you got to the shop ?—One of the

B assistants.

938. What did you say to him ?—I simply handed him the prescription.

939. What did he say to you ?—He took the prescription from me and asked me whether I would wait or call again.

940. What did you say ?—I asked him how long.

C 941. What did he say ?—I think he said about half an hour or an hour—I just forget. I said I would call again.

942. Did you call again ?—Yes.

943. Did you see the same assistant ?—Yes.

944. What did he give you ?—He gave me a package together with

D the prescription.

945. Have you got there what he gave you ?—I have got one of them.

(Exhibit put in and marked J.H.B. 2.)

E Mr. WALTER : There is only one alleged.

Mr. LEVETT : I want to get the whole facts out.

946. That you have got was one ; did he give you anything else beside that ?—Yes, I got a bottle of Hazeline.

947. Then did you pay him ?—Yes.

F Mr. NEVILLE : Unless my friend wants it we had better not put the Hazeline in.

Mr. WALTER : I do not know that it has anything to do with the case.

Mr. NEVILLE : It has nothing to do with it except that it was

G given with this order.

Mr. Justice BYRNE : It has nothing to do with this case, except possibly for one reason.

Mr. NEVILLE : We do not mind whether it goes in or not.

Mr. WALTER : I want to see it.

H Mr. NEVILLE : If you do not want it put in we will not cumber the evidence with it.

948. Mr. LEVETT : You paid for it. Did anything else pass ?—No.

Cross-examined by Mr, WALTER..

I 949. " Hazeline " is a proprietary article sold by Messrs. Burroughs & Wellcome ?—I do not know. I do not know anything about it.

950. You know nothing about it at all ?—No.

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Mr. J. H. Bradbury.

951. Is this your only visit ?—Yes.

952. Nothing took place except you handed this in ?—No.

Mr. Justice BYRNE : What is on that bottle ?

Mr. WALTER : " One to be taken at bed-time every night."

Mr. Justice BYRNE : No name ? A

Mr. WALTER : No name at all except the lady's name " Miss M. Scott "—nothing else.

Mr. Justice BYRNE : I suppose these sort of things are ordered in a prescription, and then they are copied into a book. As far as I can see that is the only thing to take up time. B

Mr. WALTER : Yes, and they write out the label and so on. I mean the usual mystery that takes place.

Mr. Justice BYRNE : You could not have a prescription to order and hand it over.

Mr. NEVILLE : It is no good making it too simple. C

Mr. D. Chapman.

Mr. DENNIS CHAPMAN, sworn.

Examined by Mr. SEBASTIAN.

953. Do you live at Harpurhey, near Manchester ?—Yes.

954. Are you a clerk with the firm of Slater Heelis, solicitors, in Manchester ?—Yes. D

955. On the 9th January in the present year did you go by your employer's instructions to the Defendant's shop in Deansgate, Manchester ?—Yes.

956. Did you take a prescription with you in writing ?—Yes.

957. Look at this and see if that is the one (Handing same to Witness.) ?—Yes, this is the prescription. E

958. Does that say " tabloid soda-mint ; one or two to be taken immediately after meals " ?—Yes.

(Put in and marked D.C. 1.)

959. Then it goes on to say " for a fluid preparation " ?—Yes. F

960. When you got to the shop with that what did you do with it ?—I said to the assistant, " I want this prescription made up."

961. What did he reply ?—He said it would take him a hour or so to make it up, and that they closed the shop at 7 o'clock.

962. Upon that what did you do ?—I said I would call again just G before 7 o'clock.

963. Did you call again ?—Yes.

964. When ?—Just before 7 o'clock.

965. Did you see the same man ?—Yes.

966. What passed between you then ?—I asked him if the prescription H was made up, and he went behind a partition and brought me a parcel sealed up at both ends.

967. Did you bring the prescription back with the parcel ?—Yes, the prescription was in an envelope.

968. Then you paid him for it ¿—Yes, 1s. 9d.

969. Did you open the parcel ?—Not till I got back to the office.

970. When you got back to the office did you open the parcel ? —Yes.

A 971. Can you identify what it contained ?—Yes.

972. Will you see if you have it there ?—Yes.

Mr. SEBASTIAN : I think there was also a bottle, but that does not enter into this case, so I need not ask about it.

Cross-examined by Mr. WALTER.

B 973. Is this your only expedition ?—Yes.

Mr. FRANCIS ~~SPEKE~~ Speat, sworn.

Mr. F. ~~Speke~~ Speat

Examined by Mr. KERLY.

974. Do you live at 31, St. Oswald Street, Collyhurst ?—Yes.

975. Are you clerk to Messrs. Slater, Heelis & Co. ?—Yes.

C 976. On the 9th February of this year in the morning, did you have instructions from your employers and did you then go to a shop at 51, Piccadilly, Manchester ?—Yes.

977. Did you take a list with you—a slip of paper ?—Yes.

978. Look at this and see if it is the slip of paper. (Handing same

D to Witness) ?—Yes.

(Put in and marked " F.S. 1.")

979. What did you do with that ?—I handed it to the assistant, and I pointed to the words " saccharine tabloids," and said, " I want this." He said, " What price ? " and he quoted me some prices—1s. 3d. and 2s. 6d.

E I said : " I will have them at 1s. 3d., please." He went to a glass case behind and took a small bottle out and then he went to the other end of the counter and stayed there for about a minute—I never saw him—and then he came down to the end where I was and handed me a small packet and I paid him the 1s. 3d.

F 980. Then did you go out of the shop ?—Yes, and I came back again.

981. What happened when you came back ?—I asked for the slip of paper that I had given him, and he said it was in the packet.

982. What did you do with the packet ?—I took it to the office and

G I opened it there.

983. Have you seen *that* thing ?—Not the bottle.

984. Will you look at the bottle ? Have you seen that before ? —Yes.

985. What is it ?—" Saccharine pellets."

H 986. Where have you seen it before ?—At the office.

987. Where before that ?—Nowhere besides the office.

988. Mr. Justice BYRNE : It was wrapped up ?—Yes, wrapped up.

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Mr. F. ~~Spoke.~~ eate

989. Mr. NEVILLE : Did you open the packet yourself ?—Yes, at the office.

990. What did you get out of it ?—This. (Indicating the bottle.)

Cross-examined by Mr. WALTER.

991. Is this your only visit ?—Yes. A

992. Are there many clerks in Messrs. Slater, Heelis & Co.'s office ?—Yes.

993. How many clerks have you got there ?—I believe about forty to forty-five.

994. Did they draw many blanks, do you know ?—— B

Mr. Justice BYRNE : I do not think you can ask him about the others.

Mr.
L. H. Dean.

Mr. LEONARD HESLOP DEAN, sworn.

Examined by Mr. NEVILLE.

995. Are you a clerk with Messrs. Slater, Heelis & Co. ?—I am a C solicitor and managing clerk.

996. With them ?—With them.

997. On Friday, the 9th of January, 1903, in accordance with instructions from them, did you call at the Defendants' shop, 39, Deansgate ?—I did. D

998. Did anybody go with you ?—Yes, I took an articled clerk, Mr. Arthur Ward Jones.

999. Did you go into the shop in Deansgate with Mr. Jones ?—I went with Mr. Jones

1000. When you went in was there a man assistant behind the E counter—in fact, they are all men, I believe ?—I have never seen any females there.

1001. The assistants are men or boys. Could you recognise again the assistant whom you saw ?—I have no doubt I should recognise him again. F

1002. Just tell my Lord what happened when you went into the shop and saw the assistant ?—I said, "Will you let me have a bottle of potassium chlorate tabloids, please." He went towards the back of the shop, and as he was going I said, "What price are they ?" He said, "They are 6d. a tin." I said, "That will do, thank you." Then a few G seconds afterwards he came from behind the partition, handed me a parcel wrapped up in white paper, for which I paid him 6d. We had a short discussion on the merits of indiarubber sponges, then Mr. Ward Jones made a purchase of a tooth brush, and together we left the shop.

1003. What did you do with the packet you received ?—I took it to H the office and opened it.

1004. Can you tell if this is what you found inside it ?—This is the packet—I initialled it and dated it; my initials and the date are on it now.

1005. This is what came out of the packet ?- Yes. I

(The same was put in and marked L.H.D. 1.)

Cross-examined by Mr. WALTER.

Mr. L. H. Dean.

1006. You asked for potassium chlorate and he said 6d. a tin?—I asked for potassium chlorate tabloids. I asked for a bottle, and then I said, "By-the-bye, what price are they." He said, "6d. a tin." I said
A that would do—meaning I would have a tin.

1007. And you got compressed pellets?—Yes, pellets.

1008. Is that your only visit?—My only visit.

1009. The staff seem to have been very busy?—Yes, from time to time.

B 1010. You suppose you know all about it—you are responsible for it?—A clerk who has been 25 years in his position must know a good deal which goes on in the office.

1011. You were responsible for it?—For what?

1012. For all this?—No, I was not.

C 1013. Did the whole staff go?—A very fair proportion of them, no doubt.

1014. About 40 or 50 of you?—No.

1015. Not as many as that?—Oh, no.

1016. How many do you think went?—I daresay 20.

D 1017. There were a good many that did not come off?—That I cannot answer for.

Mr. NEVILLE: We will now call Mr. Arthur Ward Jones.

Mr. WALTER: You need not call Mr. Jones. I am ~~at~~ not doubting what Mr. Dean has said.

E Mr. PERCY DAWSON REED, sworn.

Mr. P. D. Reed.

Examined by Mr. LEVETT.

1018. I think you live at 14, Norten Grove?—No. 10, Northern Grove, West Didsbury.

1019. You are a clerk to Messrs. Slater, Heelis & Co.?—I am a
F solicitor, a managing clerk there.

1020. I think on Saturday, the 10th of January, this year you had instructions to go to the shop 51, Piccadilly?—Yes.

1021. With whom did you go?—Mr. Charles Williams, another clerk in the office.

G 1022. When you got there whom did you see?—I saw an assistant and asked him for a bottle of chlorate of potassium tabloids.

1023. What did he say to you—anything?—I asked him the price of them. He said they were 6d.

1024. What then?—Then he handed over the counter a tin box with
H chlorate of potass pellets.

1025. Is that the box he handed over to you?—Yes.

1026. What did you say to that?—I said, "These are not tabloids, are they"? and he said, "Yes, they are."

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Mr. P. D. Reed.

1027. Did Mr. Williams buy something too ?—Yes, he bought some bryonia alba pilules I think they were.

1028. Did anything else pass ?—Not that I know of. We left the shop then.

Cross-examined by Mr. WALTER. A

1029. He handed you this I suppose as it was ?—Yes.

1030. You saw "pellets" written on it ?—Yes, I saw "pellets" written on it.

1031. You were quite content to take that away with you ?—I asked if they were tabloids afterwards, and I was told they were. B

1032. What do you understand by "tabloids" ?—I understand Burroughs & Wellcome's goods.

1033. Oh, indeed ?—I do.

1034. Who instructed you that meaning of the term ?—I had known it for a good many years. C

1035. We know you went there to try and get Burroughs & Wellcome's ?—I went and asked for Burroughs & Wellcome's goods by asking for "tabloids."

Mr. WALTER : I am much obliged.

Higham

Mr. H. ~~Hyam~~ Higham

Mr. HARTAS ~~HYAM~~, sworn. D

Higham

Examined by Mr. SEBASTIAN.

Heelis 1036. Do you live in the neighbourhood of Manchester, and are you a clerk of Messrs. Slater, Helis, & Co ?—Yes.

1037. On the 13th January of the present year did you go to the Defendant's Shop in Deansgate, Manchester ?—Yes. E

1038. Did you take a slip of paper with you ?—Yes.

1039. Just open that and see if you find the paper inside ? (Handing a packet to Witness.)—Yes.

1040. That paper is marked H.H. 1, is not it ?—Yes.

1041. That says "Get me a small bottle of saccharin tabloids," does not it ?—Yes. F

1042. When you got to the Deansgate shop, what did you do ?—I handed to an assistant this paper, and I said, "Give me a small bottle of these.'

1043. What did he do or say ?—He said nothing. He got the bottle from a small glass case ; he went to the other end of the counter. G

1044. Which did he do first ? Did he get it from the glass case or go to the other end of the counter first ?—Got it from the glass case.

1045. And having taken it from the glass case he went to the other end of the counter ?—Yes, and he came back in about a minute and gave me a small packet sealed. H

1046. You say sealed up ?—Yes.

1047. Did he show you what he was putting into the packet ?—No.

1048. When you paid for the goods and came away?—Yes.
1049. Did you bring the slip of paper with you?—I picked it up from the counter.
1050. And took it away with you?—Yes.
A 1051. Did you open the packet?—No, I gave it to a clerk who opened it in my presence.
1052. And you saw what the packet contained then?—Yes.
1053. What was in the packet? Was it a bottle?—It was a bottle.
1054. Can you identify that bottle?—Yes.
B 1055. Is that the one which was in the packet? It is H. 2. H.? (Handing bottle to Witness.)?—Yes.

Cross-examined by Mr. WALTER.

1056. I see these are pellets?—Yes.
1057. That was your only visit?—Yes.
C Mr. NEVILLE: My Lord, there are only two other witnesses who have to deal with this part of the case, and one is unavoidably absent at Manchester. They both speak to the same thing. I will ask your Lordship to let me call them later. We cannot very well start on a fresh branch of evidence now. I mean we could not get through any of the
D other witnesses.
Mr. Justice BYRNE: Very well.

(Adjourned to Monday morning at 10.30.)

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
21st November, 1903.

BEFORE
MR. JUSTICE BYRNE.

Burroughs, Wellcome & Co.

—v.—

Thompson & Capper.

IN THE MATTER OF THE TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER OF THE PATENTS DESIGNS AND TRADE MARKS' ACTS, 1883-1888.

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MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Plaintiffs' Solicitors.

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Defendants' Solicitors.

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In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
Monday, November 23rd, 1903.

BEFORE—
MR. JUSTICE BYRNE.

BURROUGHS, WELLCOME & CO.

— v.—

THOMPSON & CAPPER.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY, appeared on behalf of the Plaintiffs (instructed by Messrs. MARKBY, STEWART & Co.)

Mr. A. J. WALTER, and Mr. J. H. GRAY, appeared on behalf of the Defendants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

THIRD DAY.

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Mr. NEVILLE: My Lord, I have a medical witness here who is very anxious to be released. May I put him in the box at once?

Mr. Justice BYRNE: Yes.

Dr. ARTHUR PEARSON LUFF, sworn.

Dr. A. P. Luff.

Examined by Mr. NEVILLE.

A

1058. You are a Doctor of Medicine, a Fellow of the Royal College of Physicians, a Member of the Royal College of Surgeons, and are the

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Scientific Expert to the Home Office?—I am one of the two experts to the Home Office.

1059. What is the "R.S.C.P."—I do not follow the letters for the moment?—Royal College of Physicians, I presume.

1060. Are you Goulstonian lecturer there?—I was Goulstonian lecturer to the College of Physicians.

1061. I think you are connected with the St. Mary's Hospital and a lecturer there?—I lecture on medical jurisprudence and am physician there.

1062. I think you are an examiner for the University of London?—Yes.

1063. You live at 9, Queen Anne Street, London?—Yes.

1064. You are in practice as a physician?—Yes

1065. How long have you been in practice?—17 years.

1066. Do you know the compressed drugs sold by Burroughs, Wellcome & Co.?—Under the name of tabloids.

1067. First of all, I was going to ask whether you knew them?—Oh, yes, I know them.

1068. Under what name—you have already answered the question I was going to put?—Only under the name tabloids.

1069. How long have you so known them?—For the past 17 years.

1070. That is throughout the whole of your practice?—Throughout the whole of my practice.

1071. Have you known the word in connection with the make of any other people except Burroughs, Wellcome & Co.?—No, not of any other.

1072. Are there other compressed drugs upon the market as well as Burroughs, Wellcome & Co.'s?—Oh, yes.

1073. Was that so 17 years ago?—I knew of some, but not so many of course as now. I knew of some then.

1074. There were some then, but there are more now?—Yes, there are many more now.

1075. Can you give us examples of the names under which those other compressed drugs were sold by the different vendors—just two or three I mean?—Tablets, tabella, ~~palatoids.~~

1076. Pellets, do you know that as a descriptive term?—Oh, yes, such a term is used.

Palatinoids

1077. In 1884 was there anything new in the idea of compressing drugs for administering in a convenient shape?—Oh, no, it was employed prior to that time. The compressing of drugs was employed before that time.

1078. Are you sufficiently acquainted with the drug market to tell my Lord whether if any other manufacturers had been selling under the name of tabloid, you would have been likely to come across it?—I think almost for certain I should.

1079. But you never have?—I never have.

1080. Are you familiar with Messrs. Burroughs & Wellcome's advertisements?—Yes.

1081. Have you come across them?—Yes, I have seen many of them in the medical papers.

1082. Do these advertisements in the medical papers come to the notice of the practising members of the profession?—Yes, I should say the majority of them look at the advertisements at times.

1083. It is, perhaps, rather too much of a truism, but in prescriptions, A of course, the quality of the drugs is an important factor?—Extremely important.

1084. And accuracy of dose another important factor?—Extremely important.

1085. In your opinion have Burroughs & Wellcome's compressed B medicines a high reputation in the market for quality of drugs and accuracy of composition of the doses?—Yes, that is so, in my experience they can always be relied upon.

1086. Do you in prescriptions, as occasion requires, specify for their drugs?—No; if I write the word "tabloid" I never put Burroughs & C Wellcome underneath, because I expect that only Burroughs & Wellcome's products will be specified if I write down "tabloid."

1087. To put it another way. Do you in your prescriptions—I do not say always, but from time to time—intend the employment of Burroughs and Wellcome's drugs?—If I use the word tabloid I certainly D intend that, and only that.

1088. You and I were approaching it from opposite directions, that is the only thing. I will put it in this way. Do you use tabloids in prescriptions that you write?—Yes, I do at times.

1089. Intending Burroughs & Wellcome's products?—Intending only E their products.

1090. And none other?—None other.

1091. Can you tell me whether that is not an infrequent practice in the medical profession?—I cannot speak for others, but I know that others do think as I do, because I have talked with them at various times F on the matter.

1092. I will put it in this way. I think you are entitled to give us an opinion there. In your opinion in the profession is the use of the word tabloid or tabloids indicative of Burroughs & Wellcome's manufacture?—It is, as far as I have distinctly talked with people on the G matter.

1093. As far as your knowledge of the profession goes?—As far as my knowledge of those individuals I have spoken to on the matter goes.

1094. Had you ever heard of the word tabloid until it was used by Burroughs, Wellcome & Co.?—No, that was the first time I heard of it H when they employed it.

1095. Have you ever prescribed tabloids of a drug in cases where tabloids were not manufactured of that particular drug?—Yes, on one occasion I remember.

1096. I wanted to get the fact from you first that has happened? I —Yes.

1097. Can you tell me when that happened and what the result was?—It was a few years ago, I should think about four or five years ago, I prescribed a drug which was I believe originally invented by a Japanese bacteriologist—~~taeha~~ diastase. I thought that was made up by Burroughs

taka-

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and Wellcome, and I ordered in the prescription ~~tacha~~ diastase tabloids. The pharmacist to whom the prescription was taken by the patient came to me saying that he had been to Messrs. Burroughs & Wellcome and found that they did not make them at all, and it turned out afterwards there were no ~~tacha~~ diastase tabloids; it was a compressed form of the drug made by another maker. I thought at the time it was made by Burroughs & Wellcome.

1098. In case a physician prescribes something which a chemist does not keep and is unable to procure, what is the proper course in a case of that kind?—The pharmacist, I take it, would communicate with the medical man.

1099. He would communicate with the physician who prescribed?—Certainly.

Cross-examined by Mr. WALTER.

1100. The termination "oid" is a very well known termination, particularly in medical works and mathematical names?—Oh, yes.

1101. Typhoid, rheumatoid, adenoids, varioloid and various others?—Yes, it is frequently used.

1102. It is a very common termination?—Yes.

1103. It has a well understood meaning?—A very bad meaning in some cases, I am afraid.

1104. It is "of the nature of" generally?—It is frequently used.

1105. And means "of the nature of"?—Yes, "a likeness to"—from *eidos*, the Greek word—"a likeness to."

1106. You are aware, doubtless, that the word "tabloid" has become a word of general use?—Since it was employed by Messrs. Burroughs & Wellcome—yes, I should say it has.

1107. It has become a word of general use?—It is very frequently used, because their products are very frequently employed.

1108. You have known it used frequently, have you not, without reference to their tabloids?—I have only know it in reference to their tabloids.

1109. You have never seen it in literature?—In medical literature?

1110. In any literature?—I have seen it certainly in medical literature; I cannot say as to any other form of literature.

1111. You do not know the word?—The word "tabloid"?

1112. You do not know the word "tabloid" except used with regard to Messrs. Burroughs & Wellcome?—That is so. I have only seen it in medical literature where it has referred to their products.

1113. That is all you know of it?—That is all I know of it.

1114. What shape do you consider a tabloid is?—I do not consider that it necessarily need be of any particular shape.

1115. What should you call *this* for instance? (Handed.) What should you call that if you were asked to describe its shape?—Is it solid?

1116. I do not know what it is. You may assume it is solid?—You ask me the shape?

1117. Yes, what should you call it?—I should call it a bi-convex body.

1118. What is the single name you would apply to it?—It entirely depends on whether it is solid or not.—It might contain a fluid.

1119. Assume it is solid?—Assuming it is solid, if it were made by Burroughs & Wellcome I should certainly call it a tabloid.

A 1120. What is the single name?—I am endeavouring to reply. I say if this was one of Burroughs & Wellcome's products I should call it a tabloid. If not, it is either a lozenge or a tablet, or a compressed substance.

1121. What do the public generally call it?—I do not know what the
B public would call it. I only know what I call it.

1122. Do you tell my Lord the public do not use the word "tabloid" as referring to an article of that sort?—You ask me what the public call it—I do not know; I can only say what I call it.

1123. You are entirely confined to the narrow circle of Burroughs &
C Wellcome, the chemists, and the profession?—I do not know what the general public call it.

1124. Of course, if you do not know you cannot tell?—I do not know what the members of the public would call it; I cannot be responsible for what they say.

D 1125. Mr. Justice BYRNE: I think what Mr. Walter means is this: supposing you have an article of that shape shown you—suppose it was a block of wood or anything—suppose it was of that shape, do you know any one word that would express the shape of the form of it. In general language?—I should think lozenge if it were anything to be taken
E internally would be the term most frequently used by the public.

1126. Mr. WALTER: You think that is what the public generally would understand by a lozenge?—Yes.

1127. Tabloid would be a most improper term to use?—I say if this was one of Burroughs & Wellcome's products, if that was their term it
F would be a correct one.

1128. I am asking with regard to the shape?—I do not think that the shape would have anything to do with what one would call it.

1129. Shape is in no form associated with it. That is the only shape in which Burroughs & Wellcome put up the majority of their products, is
G not it?—No, I do not think they are quite so bi-convex as this.

1130. They are a little flatter, are they?—They are rather flatter, most of those I have seen. I am not prepared to say there are not any of this shape, but certainly not those I have seen.

1131. Do you tell my Lord that you are unable to give me any infor-
H mation as to how the public use the word "tabloid"?—No, I have no information.

1132. You cannot give us any information?—They may apply the term to Burroughs & Wellcome's products—I am applying the term to them.

I 1133. Have any patients suggested to you that they should take tabloids?—No, I have suggested it to them, but not them to me.

1134. You have never heard a patient ask whether he is to take a tabloid?—No, I cannot say I have. I am not in the habit of hearing persons suggest what drugs they should take when they consult me.

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1135. Nor the form, " Cannot I take it in tabloid form " ?—I think I have heard that question asked, whether it could be given in some compressed form.

1136. Do you suggest the patient asks whether or not it can be given in compressed form ?—" A compressed form " is a far more likely A term to use.

1137. I do not ask about likely. What did they use ?—I say that is the term I have most frequently heard.

1138. Judging from one's experience it is generally that " It would be so much more handy if I could have it in a tabloid form " ?—— B

Mr. NEVILLE: Oh come now.

1139. Mr. WALTER: You have never had such a question put to you ?—I am not prepared to say I have. I am bound to say in the majority of cases the adjective " compressed " has been used—in a compressed form, or what is more commonly now asked is for drugs to be C given in cachet form.

1140. A cachet is a very different thing ?—It is very different. Instead of compressing the powder——

1141. It is put into those little cases ?—Into a rice paper capsule.

1142. That is not compressed at all ?—No. D

1143. A cachet is merely filling the inside of one of those little—I do not know what they are made of ?—Little rice paper capsules.

1144. That is not in compressed form, it is generally about the size of a shilling ?—Not necessarily.

1145. Generally ?—A threepenny bit up to a shilling. E

1146. And sometimes as big as a half crown ?—I have not seen one that size.

Mr. WALTER : I have.

Mr. NEVILLE : I am sorry my learned friend has had so much experience in these matters. At all events he can swallow a good deal. F

1147. I do not want to put you in a hole, but there are a large number of these. I have put to you a certain number. With regard to " oid " in medicines there is deltoid ?—Yes.

1149. And " canoid " ?—Yes.

1150. Febroid and melloid and others ?—Yes. G

1151. Do you use B. W. & Co. after the word " tabloid " ?—In prescriptions.

1152. Yes ?—No.

1153. Never ?—No.

1154. You never use B.W. or Burroughs & Wellcome ?—To my H knowledge for a great many years past I simply write such and such a tabloid.

1155. You used to put B.W. & Co. ?—I may have, but not to my knowledge. I am quite prepared to hear that I have in times past, but not to my knowledge. I

Re-examined by Mr. NEVILLE.

1156. Have you any recollection of ~~their~~ having prescribed Burroughs & Wellcome's compressed goods except as tabloids ?—Only as tabloids.

1157. Without any addition ?—Without any addition.

1158. So far as your personal experience goes, have you come across the general use by the public of the word tabloid as indicative of the shape and not of the manufacture of the medicine ?
A —No, I cannot say that I have. As I was saying the only Association that I have in my mind is with Burroughs & Wellcome.

1159. My friend was asking you about patents, and so on, as far as your intercourse goes have you observed the use by the public of the term tabloid as indicative of form and not of Burroughs & Wellcome's
B products ?—None. I cannot say that I have.

Mr. LEVETT : We are now going back to the old type of witnesses, my Lord.

Mr. WILLIAM HENRY SYKES, sworn.

Examined by Mr. LEVETT.

C 1160. I think you live at 34, Dover Street, Higher Crumpsall, Manchester ?—Yes.

1161. You are the managing common law clerk of Messrs. Slater, Heelis & Co. ?—That is so.

1162. On Wednesday, the 13th August last year, did you in pursu-
D ance of instructions go to the Defendants' shop, No. 51, Piccadilly, Manchester ?—Yes.

1163. Did anyone go with you ?—Mr. Charles Pierrepont Brabazant.

1164. He is I think an articled clerk in the office ?—He is.

1165. When you got there did you ask an assistant for something ?
E —Yes.

1166. Can you describe the assistant you asked ?—He was a young man, inclined to be dark, with dark hair.

1167. What did you ask him for ?—I asked him for a bottle of Burroughs and Wellcome's cascara sagrada tabloids.

F 1168. What did he say to you ?—He went round to the show case, got a bottle, and immediately previous to wrapping it up, he said, " It has got our name on. I said, " Are they Burroughs & Wellcome's goods," and he said " Yes." I said " Very well," and he wrapped them up and gave them to me.

G 1169. Was anything said about the price ?—He asked me if I wanted a 1s. 9d. bottle or a shilling one, so I elected to take the 1s. one.

1170. I think you paid him the shilling. Do you produce the bottle he gave you ?—Yes. (Bottle produced.)

1171. Is that the bottle ?—That is the bottle.

H 1172. It is marked " W.H.S. 1." Where was Mr. Brabazant when this conversation took place ?—Immediately at my right hand.

1173. Close to you ?—Yes, just at my right.

1174. Then whatever passed he would hear ?—Certainly.

1175. Did you on the same day go to the Defendant's other shop ?
I —Yes.

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Mr. W. H. Sykes.

1176. That is in Deansgate, is it not ?—Yes, 39, Deansgate.

1177. What did you ask for there ?—I asked for Burroughs & Wellcome's sulphonal tabloids.

Cross-examined by Mr. WALTER.

1178. That is the 13th August, 1902, you went ?—Yes. A

1179. You are the manager in the common law department, are you ?—I am in the common law department.

1180. Managing common law clerk you are described in your affidavit ?—Yes.

1181. Was any communication of any kind with regard to this B purchase made to the Defendants until the 13th January, 1903 ?—I have no knowledge of it.

1182. You have no knowledge of any communication having been made ? —None whatever.

1183. Why was that done ?—I was instructed to do so. I was C instructed by my principals to go.

1184. There was no communication to the Defendants until five months after the date ?—They did not ask me to communicate to them.

1185. You asked verbally for Burroughs & Wellcome's cascara tabloids, and you were told that the goods were their own ?—I was led D to believe that the goods were Messrs. Burroughs & Wellcome's.

1187. What was the exact statement that was made to you ?—When the assistant got the bottle he said, "It has got our label on." I said, "Are they Burroughs & Wellcome's goods," and he said "Yes."

1188. Are you perfectly certain of what was said to you, or whether E you were not told the goods were their own ?—I was not told the goods were their own.

1189. You were not told the goods were theirs ?—I was not.

1190. Have you been since ?—I have been only for identification.

1191. Have you been able to identify anybody ?—I saw the assistant F there and subsequently I went to see the manager for the purpose of serving him with the Writ.

1192. When you served the Writ ?—When I served the Writ.

1193. You had not been on the September visit with a large number of other people ?—No. G

1194. You did not go to identify the ordering of anything there in September ?—No.

1195. Have you paid any other visits ?—Only for the purpose of identification.

1196. That is all ?—That is all. H

1197. When did you pay that visit ?—I did not keep an exact record of it in my mind.

1198. Did you then go to Deansgate ?—For the purpose of identification ?

1199. No, for purchase ?—Yes. I

1200. What did you get there ?—I got a bottle which I marked W.H.S. 2.

1201. What was that ?—That was simply a bottle containing "sulphornal tablets" marked on it, I found when I got to the office.

1202. Marked "tablets" ?—Yes, marked "tablets."

1203. What were the goods ?—I do not know.

A 1204. You know nothing about them at all ?—Nothing about the goods at all.

1205. We are not concerned with it in this case then; but to your knowledge no communication of any kind was made to the Plaintiffs until the writ ?—It was not my business to do so.

B 1206. You paid this visit, I suppose, on the instruction of your principal ?—That is so.

1207. You went to get tablets ?—I went to get Burroughs, Wellcome & Co.'s goods.

1208. You went to get tablets ?—I went to get ~~tablets~~ Tabloids.

C 1209. You went in the hopes of getting tablets ?—I did not go in any hopes whatever.

1210. What were you told before you went ?—I was simply told by my principals to go to Messrs. Thompson & Capper's respective shops and ask for Burroughs, Wellcome & Co.'s goods—different kinds at each

D shop.

1211. Did you know nothing further ?—Nothing further.

1212. That is all the instructions you had ?—All that I was instructed to do.

1213. Did you know anything yourself without instructions ?—In

E what way.

1214. As to what they were selling ?—No.

1215. You knew nothing ?—No, only from instructions, of course.

1216. You have told us the whole of the instructions ?—That is so.

1217. You got, as a matter of fact, compressed tablets with Thompson

F & Capper on them ?—I found that out when I got back to the office.

Re-examined by Mr. NEVILLE.

1218. Was the bottle that was given you done up in paper or in a packet ?—Yes.

1219. You did not open it until you got back to the office ?—Not

G until I got back to the office.

Mr. LEVETT: I will now call the other witness who can speak to it.

Mr. CHARLES PIERPOINT BRABAZON, sworn.

Examined by Mr. LEVETT.

H 1220. I think you live at Brook House, Lyme, in Cheshire ?—That is where my home is.

1221. You are an articled clerk to Messrs. Slater, Heelis & Co. ?—Yes.

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Mr. C. P. Brabazon.

1222. Did you go with the last witness to the Defendants' shop on the 13th August last year?—Yes.

1223. What took place?—Mr. Sykes asked for some Burroughs, Wellcome & Co.'s cascara sagrada tabloids and the assistant behind the counter came out to get a bottle and as he was doing it up, he said: "They have our name on them." Mr. Sykes said: "Are they Burroughs & Wellcome's," and he said: "Yes." Before that he asked what price Mr. Sykes would have them at 1s. 9d. or 1s. and Mr. Sykes said 1s. A

1224. Was the bottle wrapped up?—As he was wrapping it up he said "These have our name on." B

Cross-examined by Mr. WALTER.

1225. Did you know anything about it at all before you went?—I guessed that there was something about it.

1226. Did you know anything about tablets?—No, I knew nothing about it. C

1227. You were merely hunting in couples—a lot of you—the whole staff almost were employed on this?—I do not know how many were employed.

1228. A very large number?—I do not know how many. D

1229. Was it a matter of common discussion in the office?—Not before I went.

1230. It was afterwards?—I did not know of it.

Sir F. H. Laking

Sir FRANCIS HENRY LAKING, sworn.

Examined by Mr. NEVILLE. E

1231. You are a Doctor of Medicine and a Member of the Royal College of Physicians, Physician in Ordinary to the King and Prince of Wales and to the household of the Duke of Connaught, and so on?—Yes.

1232. Have you been in practice as a physician for over 40 years?—Since 1868. F

1233. Do you know the compressed medicines sold by Burroughs, Wellcome & Co.?—Yes.

1234. Under what name do you know them?—As tabloids.

1235. In your opinion, what does "tabloid" mean?—I think it is a term coined by Messrs. Burroughs, Wellcome & Co. G

1236. Do you yourself use tabloids in prescriptions?—Frequently.

1237. Do you ever use it without any addition of the name of the firm or initials of the firm? Do you ever use it simply as "tabloid" or "tabloids" in your prescriptions?—If I were to order a tabloid I should expect it to be a drug or a small article manufactured by Burroughs, Wellcome & Co., but if I wanted a drug from any other house I should put their name underneath it. H

1238. Have you in your long experience ever come across any other house selling drugs under the name "tabloids"?—No, I do not think I have.

1239. Have you ever known of any preparations not manufactured A or supplied by Burroughs, Wellcome & Co. being described by the name "tabloid" or "tabloids"?—No. They are so extensively advertised in the papers that one can see it is a term always used by Burroughs, Wellcome & Co.

1240. Have you noticed Burroughs, Wellcome & Co.'s advertisement B in the medical journals?—Yes, that is where I got my knowledge from.

1241. Have you prescribed Burroughs, Wellcome & Co.'s preparations for your patients under the name of "tabloid" or "tabloids" for some years?—Yes, for some years. I should not like to say how many.

1242. It is not a new practice of yesterday with you; you have done C it for some time?—No, I have done it for some years.

1243. In every such case do you intend Burroughs, Wellcome & Co.'s productions to be supplied?—Yes, if I wished any others I should put the drug manufacturer's name under them.

1244. Did you ever hear the word "tabloid" until you heard of it in D connection with Burroughs, Wellcome & Co.'s goods?—No, I think it is a word manufactured by Messrs. Burroughs, Wellcome & Co. themselves.

1245. That is the idea you have of it?—That is the idea I have of it. I have seen that in the papers.

1246. At the time when you first saw the name "tabloid" there were E other compressed medicines besides Burroughs, Wellcome & Co.'s in the market, I suppose?—These compressed drugs have been in the market for a great many years manufactured by various houses.

1247. Are they called by different names? Could you give us examples of the names under which they have been sold?—They are F chiefly called compressed drugs and tablets, varalettes and lozenges.

1248. Names of that kind?—Yes, and bi-palatinoids, and names of that description.

1249. As far as your experience goes "tabloid" has been confined to the manufacture of Burroughs, Wellcome & Co.?—Certainly.

G 1250. Do you think that the view you have expressed is a view largely entertained by the profession?—I do not know.

1251. As far as your own experience goes?—I do not talk to many others upon that.

1252. Then you could not say anything about that?—I could not.

H 1253. You only give us your own view?—My own experience, and especially from reading the copious advertisements that appear in the medical papers. Most doctors see them, and must understand it.

Cross-examined by Mr. Walter.

1254. I understand that in prescribing a drug in tabloid form you I never order it with B. & W. or B. W. & Co.?—No, because if I ordered a tabloid, I should expect to get Burroughs, Wellcome & Co.'s drugs.

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1255. What is the word with which you use the other initials ?—I do not quite follow you.

1256. You said when you wished for the drugs of another manufacturing chemist, you used the initials ?—I should put P. D. & Co.—Parke, Davis & Co. A

1257. What would the word be ?—I should put a tablet.

1258. You never put a tabloid ?—I should not put a tabloid.

1259. Not what you should, but do you ?—No.

1260. You do not ?—No.

1261. You associate "tabloid" in your mind entirely with Burroughs, Wellcome & Co. ?—Certainly. B

1262. I do not know whether you can tell us anything about the public ?—No.

1263. You do not know about the public at all—how they use the word "tabloid" ?—Not the slightest. C

1264. Not your patients ?—To patients I should simply give a prescription written out with what I intended.

1265. But they have never suggested it to you ?—No.

1266. You never recollect the case of a patient having used the word "tabloid" ?—No, I do not think I have. Patients do not often talk about D things like that—they would call it medicine.

1267. What do you understand by "tabloid," apart from the particular person who makes it ?—I do not know. I suppose "ϕidos" means "like something." I suppose it is supposed to be a kind of hybrid term. It does not seem to mean much of anything. E

1268. The word "tabloid," apart from manufacture, is perfectly defined. Is it a bar of soap ?—No. I should think "tabloid" means, as manufactured by Burroughs, Wellcome & Co., some form of drug put in a small vehicle. I see there is something very much like a compressed drug there—a thing very much like the thing on *that* desk. F

1269. Just look at it. (Handed) ?—That is a compressed drug.

1270. That is a tabloid ?—I do not know that it is a tabloid ; it is a compressed drug. If it were Burroughs, Wellcome & Co.'s it would be a tabloid.

1271. That is the type you understand by the word "tabloid" ?— G That is the general shape of drugs manufactured by Burroughs, Wellcome & Co. which are called tabloids.

1272. That is what you would understand. Is not that the general meaning of "tabloid" ?—No, I should not think so.

1273. Do you know anything about general literature and the use of H the word "tabloid" ?—I do not think it appears in general literature.

1274. Do you take in "Punch" ?—I see it at the club. I do not take it in.

1275. It is pretty frequently used there ?—I did not know that.

1276. You have not seen it ?—No. I

1277. Perhaps, like many of us, you do not study the literary part much—only the pictures ?—Only the pictures.

1278. Anyway, you can tell us nothing about the general use of the word "tabloid" ?—No, I cannot really. I do not think it is a correct

word at all. It seems a portion of Latin and a portion of Greek. It seems an hermaphrodite word.

1279. A compound of Latin and Greek is not incorrect according to modern English, is it?—I should not say it is correct.

A 1280. There are any number of medical terms of a hybrid character?—Are there? I do not know. There ought not to be.

1281. It is not a question of what there ought not to be; but "oid" is a perfectly well known termination in medical words?—"Oid" I think would be a Greek termination.

B 1282. What is "typhoid"?—It is typhus—like a typhus fever; and "typhus" is a Greek word.

1283. What is "rheumatoid"?—It is "like rheumatism."

1284. And "deltoid"?—That is certainly Greek altogether, because it comes from "delta" which is the letter "d."

C 1285. "Fibroid"?—Yes. I think they are all of Greek origin.

1286. "Microid," "amyloid" and "alkaloid"?—Yes, most probably with Greek as the basis and the foundation.

1287. Then the only reason that you quarrel with it as an English word is that it is partly Latin and partly Greek?—Yes.

D 1288. That is the reason you quarrel with it?—I do not mind the term. It is a most useful term if one wants a term for a small material of that description.

1289. As a term to describe a small material of that description it is useful?—Yes, as useful as anything else. You might call it a pilule, and E from what they say in the paper they say it is entirely their own property.

1290. But the public is innocent and naturally ignorant of what they do?—The public ought not to buy drugs at all without a proper prescription.

F 1291. I quite agree. It is like a man who makes his own will?—Yes, it is a mistake.

1292. Of course you cannot recall any case in which any public use——?—No. I do not think persons have spoken to me about it.

1293. Do you know Wyeth's goods?—No. I only know one pre- G paration, which is a preparation of iron, which is a liquid.

1294. You do not know any of their preparations?—No. I only know that one preparation.

1295. You do not know Wyeth's tablets at all?—No. I have never ordered them.

H Re-examined by Mr. Neville.

1296. You think if a man makes his own will and buys his own drugs that the will is very likely to come into speedy operation?—I am afraid so. That is my view.

1297. Have you any knowledge of the use of the word "tabloid" I except as a proprietary name, indicating Messrs. Burroughs & Wellcome's drugs?—I had never heard of it until I had seen it in the paper in the advertisements of Burroughs Wellcome & Co.

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Sir F. H. Laking.

1298. And outside that you know nothing about it?—Outside that I know nothing about it.

1299. Mr. Justice BYRNE: You do not recall, in scientific or medical literature, the use of the word "tabloid," except in connection with Burroughs, Wellcome & Co.?—No. I do not think in medical works they would tell a person to take a tablet or tabloid; it would be a certain number of grains of a certain drug.

Dr. C. W. Suckling.

Dr. CORNELIUS WILLIAM SUCKLING, sworn.

Examined by Mr. LEVETT.

1300. I believe you are a consulting physician, and you practise in Birmingham?—I am.

1301. How long have you been in practice?—20 years.

1302. I think you are a Doctor of Medicine, a Member of the Royal College of Physicians, a Member of the Royal College of Surgeons, and you are Physician in Ordinary to some hospitals—is that right?—Yes.

1303. I think you were one of the professors of medicine at Mason's College?—Yes.

1304. When did you first hear the word "tabloid" in connection with medicine?—I could not tell you when. It was years ago—many years ago.

1305. In what connection did you first hear it?—In connection with Burroughs & Wellcome—in connection with the medical diaries and lists of drugs.

1306. At that time were there any other compressed drugs in the market. Not that I knew of. Certainly none that were advertised and published like these.

1307. Did you ever hear of compressed powders, for instance?—Yes, I have heard of them.

1308. Was that before or after you had heard of the tabloids?—I could not tell you. They never made any impression upon my mind, because they were never properly advertised.

1309. As far as you know, in the medical profession had "tabloid" any particular meaning?—Yes, it has now.

1310. What is that meaning?—It means a compressed drug prepared by Messrs. Burroughs, Wellcome & Co. now.

1311. Have you heard of any other manufacturer's drugs being described as "tabloids"?—No.

1312. In making up prescriptions do you ever use the word "tabloid"?—I do.

1313. When you use that word, what do you expect the chemist to supply?—Burroughs, Wellcome & Co.'s tabloids.

1314. Do you ever use any initials after the word "tabloid"?—Very often I do.

1315. What initial do you use?—B. W. & Co.

1316. Why do you use those initials?—Because I use other drugs as

well, and I always initial those, and I get into the habit of using B. W. & Co.; it is a habit.

1317. Would "B. W. & Co." give any different meaning to the word "tabloid"?—No. I know it is not safe to order things unless you use every guarantee you can.

1318. As a doctor, is it important that the prescription should be very accurately made up?—Certainly; most important.

Mr. Justice BYRNE: I do not think you need ask that, Mr. Levett.

1319. Mr. LEVETT: If your Lordship pleases. I suppose you see the medical papers?—I do.

1320. Have you seen "tabloid" advertised at all?—I have.

1321. More than once?—I should not like to say how many times.

1322. Can you tell me from your own knowledge what idea does the word "tabloids" convey in the medical profession generally?—It conveys, as I say, a compressed drug or combination of drugs sold by Burroughs, Wellcome & Co.

Cross-examined by Mr. WALTER.

1323. You tell us that "tabloid" has now the meaning, "Burroughs, Wellcome & Co." When did "now" begin?—For some years.

1324. How many years?—I cannot tell you how many years.

1325. What did "tabloid" mean before then?—It has become more and more associated with the name "Burroughs, Wellcome & Co." At first I do not think it was paid much attention to.

1326. Since about 1898 Messrs. Burroughs, Wellcome & Co. have circularised the profession *ad nauseam*, I think, and have advertised "ad nauseam" their claim to "tabloid"?—I do not think so. I think lately they may have done so.

1327. Do you know generally as to the use of the word "tabloid" by the public?—I find they very often buy these tabloids, and they also ask for Burroughs, Wellcome & Co.'s tabloids.

1328. They ask for Burroughs, Wellcome & Co.'s tabloids, I quite agree. You put B. W. & Co. on most of your prescriptions, I suppose?—Very often I do.

1329. Do you use the term "tabloid A. & H."?—No, I do not. Never heard of it.

1330. Or "tabloid P.D."?—Never heard of a tabloid P.D.

1331. I am not asking you whether you have ever heard of it. I ask you do you use it?—No. Of course if I have never heard of it I have never used it.

1332. It does not follow. You have never used the term "tabloid"—you are rigid in your use of it?—I have often used the term "tabloid."

1333. But you are rigid in your use of it, you confine it to Burroughs, Wellcome & Co.?—Yes, I always have done.

1334. You know Parke, Davis & Co. What are the initials you use in specifying the drugs of Parke, Davis & Co.?—P. D. & Co.

1335. And Allen & Hanbury?—A. and H.

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Dr. C. W. Suckling.

1336. Supposing you wanted one of the things in front of you, and wanted the manufacture of Parke, Davis & Co., what should you order? —I should order *these*.

1337. What should you order?—I should not order anything without looking in the catalogue and seeing what it was first.

Mr. Justice BYRNE: He would not order something if he did not know what it was.

1338. Mr. WALTER: I quite agree. He could do it, but I do not suppose he would. What do you call that thing, to look at?—A sweet, I think.

1339. No, the shape I mean. What would you call it?—You want me to call it what you would like.

1340. But, apart from this case, is it a tabloid?—I do not know what it is.

1341. Apart from this case, if anybody had come to you a year ago and asked what that was, you would have said a tabloid?—Very likely. It might be a tabloid, certainly.

1342. But, at all events, generally, has not "tabloid" got to mean a thing like that?—Yes, but I think it is generally supposed to be Burroughs, Wellcome & Co.

1343. As far as the profession is concerned, so far as Messrs. Burroughs, Wellcome & Co.'s capacity to advertise has done it, have they told the medical profession so?—They have.

1344. They have indeed told the medical profession that nobody has any right to use it. Do you remember the change that they made when they called it tabloid products? It used to be "tabloid," now it has become "tabloid products." Do you remember noticing the change into "tabloids"?—No, I do not.

1345. You do not remember that—or "Tabloid Trade Mark"?—I remember the "Tabloid Trade Mark."

1346. You remember that change in the advertisements—that they brought it out as "Tabloid Trade Mark"?—I have noticed a good deal of talk about "tabloid" in the last few years.

1347. I may perhaps be wrong, but do you patients ever talk about tabloids?—Yes.

1348. They do?—Yes.

1349. They, I take it, use the word generally?—I do not think they bother much.

1350. "Tabloid," in the mind of the patient, is associated with the shape of the drug, is it not—with the shape of the article?—Not altogether. They know what it means, but I think they give the credit to Burroughs, Wellcome & Co.

1351. Do you think they do?—They ask for those.

1352. If they ask for Burroughs & Wellcome's goods, then they do ask for Burroughs & Wellcome's, and they call them Burroughs & Wellcome's?—Yes, I suppose they do.

1353. They want Burroughs & Wellcome's tabloids?—Yes.

1354. What they want is Burroughs & Wellcome's little compressed drugs?—Exactly.

1355. By "tabloid" they mean a thing of *that* shape?—Yes.
1356. And that is all they mean, is it not?—I do not know.

Re-examined by Mr. NEVILLE.

1357. Have you ever used "tabloid" in connection with the goods of
A any other makers than Burroughs & Wellcome?—No.
1358. In your opinion does the meaning of the word refer to the make of Burroughs & Wellcome?—I think the name refers——
1359. The name refers to something made by Burroughs & Wellcome?—Yes.
B 1360. With regard to that thing in front of you, can you say whether it is a tabloid or not by looking at it?—I cannot possibly say.
1361. Can you tell the make of it?—No.
1362. It may be a tabloid, or may not, according to your view of what the word means; is that right?—Certainly.
C 1363. Have you any knowledge of "tabloid" being used in any other sense than the sense you have given us?—No.
1364. You personally have not?—No.

Professor
~~Mr.~~ DONALD MACALISTER, sworn.

~~Mr.~~ Prof.
D. Macalister

Examined by Mr. NEVILLE.

D 1365. You are a Doctor of Medicine?—Yes.
1366. And a Fellow of the Royal College of Physicians?—Yes.
1367. You are the senior tutor of St. John's College, Cambridge?—Yes.
1368. And a lecturer there?—Yes.
E 1369. I will not go through all your various titles, but you are Consulting Physician to the Addenbrooke's Hospital, Cambridge?—Yes.
1370. How long have you been in practice as a physician?—Since 1881.
1371. Do you know the compressed drugs sold by Burroughs,
F Wellcome & Co.?—Yes.
1372. How long have you known of them?—I cannot remember exactly, but I should think 15 years or more.
1373. A good many years, at all events. Have you known those drugs sold under any particular name?—The compressed drugs have
G always been known to me as tabloids.
1374. Does the word "tabloid," in your opinion, have reference to the goods of a particular maker?—It always has meant, in my mind, the goods of Burroughs & Wellcome.
1375. Have you ever known of its employment in connection with
H the goods of any other makers?—I cannot remember any such association.
1376. Compressed drugs have been on the market throughout the whole of your experience, have they not?—Yes, under various names.

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1377. Sold under various names?—And in various forms.

1378. Do you ever put "tabloids" in your prescriptions?—Often.

1379. When you use the word what do you intend to be supplied?—Burroughs & Wellcome's.

1380. Do you ever add the name of the firm or the initials of the firm?—Yes, "B. W. & Co.," not infrequently.

1381. Do you sometimes use plain "tabloid," and sometimes "Tabloid, B. W. & Co."?—Yes.

1382. Do you mean the same article in both cases?—Yes.

1383. Do you mean the same make in both cases?—I mean the same thing. I add the initials sometimes for what I call greater security.

1384. Have you been familiar with Burroughs & Wellcome's advertisements for a good many years?—Yes.

1385. You see them in the medical journals?—From time to time—yes.

Cross-examined by Mr. WALTER.

1386. And you have done so for a long time past?—Yes.

1387. When you are ordering a patient chlorate of potash tabloids, you do not put "B. W. & Co."?—I may have done, or I may not have done; my practice varies.

1388. I want to know why you use B. & W." in some cases and not in others?—Shall I give you the reason?

1389. Yes?—Some time ago I ordered tablets of salol, which I am in the habit of prescribing. Some time afterwards the patient came complaining that the tabloids had not the effect desired, and fell to pieces. I asked to see the bottle, and I found he had got not tabloids of salol—he had got compressed tablets of salol of inferior make. As patients fail to distinguish between "tabloids" and "tablets," which are an imitation, as I regard it, I add the words "B. W. & Co." to the prescription.

1390. And you practically always do it just now?—In cases where there may happen to be a mistake, for security, in order that they should get the tabloids, and not any other form.

1391. "Tablet" is a much older word?—"Tablet" is in the British Pharmacopæia and is from the word "tabella." I have known it from 1885.

1392. "Tablets" are very old indeed?—They represent a different form of drug—partly a convex and partly a square flat tablet.

1393. What about Wyeth's tablets?—I remember when in America in 1884 getting Wyeth's tablet triturates, which were more like granules—pellets.

1394. You know that originally Messrs. Burroughs & Wellcome used "tablets"?—Yes.

1395. Did you know they used that?—I knew Wyeth—I beg your pardon, I did not hear the name.

1396. Burroughs & Wellcome originally used "tablets," are you aware of that?—I am not aware, but I have no doubt it is correct.

1397. They also tried to claim "tablets" as their own; but you do not know that, probably. Tablets, I suppose, are very old?—I cannot say beyond 1885, because I do not happen to have looked it up.

1398. Do you know anything generally of the use of the word "tabloid"?—I do not know.

1399. In general literature?—I have not seen it in general literature. I should have thought it was a technical word.

A 1400. "Tabloid"?—Yes.

1401. What do you understand a "tabloid" to mean in shape? You say it is associated, in your mind, with Burroughs & Wellcome. What does it mean when you order a patient a tabloid; what are you ordering him, apart from the make?—That is a question which has no answer. I B cannot answer.

1402. What sort of shape is it going to take?—The shape of a tabloid is a bi-concave disc or bi-convex disc.

1403. Thank you, that is what I thought. Is not this bi-concave or bi-convex disc what the public generally associate with the term C "tabloid"?—I have seen the word "tabloid" referred to in connection with a possibility of reducing food to nothing but tabloids, or something of that kind.

1404. You had no difficulty in understanding what was meant?—I think the word was in inverted commas, implying it was not yet a D familiar word.

1405. You had no difficulty in understanding what was meant by reducing food to a tabloid form?—None whatever.

1406. Do you think any member of the public would have any difficulty in understanding what was meant by reducing food to tabloid E form?—I do not think he would find it in the dictionary.

1407. It is in several dictionaries; did you know that?—No.

1408. But you would have no difficulty. Do you think that any intelligent member of the public who was given the sentence: "Reducing food to tabloid form," would have the slightest difficulty in understonding F what was meant?—I cannot answer it.

1409. You do not think they would?—I do not know.

1410. You do not know?—I know nothing about the powers of the general public to understand a technical word.

Mr. Justice BYRNE: How should you understand the expression G itself?

Mr. WALTER: "Reducing food to tabloid form."

1411. Mr. Justice BYRNE: What would you understand by that—reducing it to any particular shape, or what?—Reducing food to the form of Burroughs & Wellcome's tabloids, I suppose.

H 1412. Mr. WALTER: Reducing it to that form?—Yes.

1413. To a bi-convex compressed condition?—Yes.

1414. That is what you would understand by it?—I suppose that is what was intended.

1415. Do you think there would be any difficulty, and do you think I any intelligent person would have any difficulty in understanding that?—If he had come across the word in the proper connection——

1416. Apart from any proper connection or anything else, do you tell my Lord that "tabloid" is not a perfectly common word in every day use now?—I cannot say that.

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Prof. D. Macalister

1417. What is the etymological meaning of the word "tabloid"?—How it was built up, I do not know, but it conveys to me the impression of being something between a tablet—something similar to a tablet.

1418. Similar to a tablet?—Yes, in form.

Re-examined by Mr. NEVILLE.

1419. You do not think it is something similar to a table?—No.

1420. That is not how it would strike you?—That is the obvious derivation of it, but that is not what it conveys to me.

1421. These tabloids of Burroughs, Wellcome & Co. have been in use for a number of years, and in very large use, have they not?—I believe so.

1422. So that most people have come across Burroughs & Wellcome's tabloids?—I suppose they must have done so.

1423. As far as you have seen, all the drugs sold under "tabloid" are compressed drugs?—Yes.

1424. Are they always in the same shape, as far as your experience goes?—I think they may vary somewhat in size and curvature and so on, but they are of the same general shape.

1425. In the sense that they are small compressed——?—Bodies.

1426. What should you call them if you had not got the word "tabloid" to use?—Various words have been used—tablets, pellets, and bi-palatinoids, for another form when coated with gelatine.

1427. All those words are in use on the market, are they?—Yes, and are more or less associated with particular makers.

Prof. J. Attfield.

1428. Have you ever found or heard of "tabloid" being associated with the name of any maker except Burroughs & Wellcome?—Not to my knowledge.

Professor JOHN ATTFIELD, sworn.

Examined by Mr. LEVETT.

philosophy

1429. Although you are called Dr. Attfield in your proof I believe you should be called Professor Attfield? You are not a doctor of medicine, I believe?—No, I am a doctor of ~~pharmacy~~ philosophy.

1430. Professor Attfield, I think you have been for 34 years a Professor of Practical Chemistry?—Yes; I was Professor of Practical Chemistry to the Pharmaceutical Society of Great Britain for 34 years, commencing in 1862 and ending in 1896.

1431. When did you first become acquainted with tabloids?—Many years ago, I do not quite know how many, but something between 15 and 20 years ago—something like that.

1432. When you first heard of tabloids in what connection did you hear of them?—In advertisements connected with the name of Burroughs, Wellcome & Company.

1433. Have you ever known the word "tabloid" applied to drugs manufactured by anyone else ?—No.

1434. You think that if that had been the case it would have come to your knowledge ?—I do.

A 1435. Why would it have come to your knowledge ?—Because I have been associated for many years—quite 20—with both pharmacy and medicine, having been the editor of "The British Pharmacopœia" for the medical counsel.

1436. Now during all this time what did the word "tabloid" convey
B to your mind ?—It has conveyed to my mind the impression that was originally received on reading advertisements and seeing the articles, namely a small piece of matter associated with the name Burroughs & Wellcome, and of a medicinal character.

1437. Some of the witnesses have spoken of compressed drugs. Is
C that a right word to use ?—Oh, yes. I have heard of compressed drugs frequently.

1438. And were there any compressed drugs on the market before "tabloids" came on the market ?—I think I may say yes to that. I have the impression that they have been known for many years.

D 1439. Can you remember what they were called, because that is what I want to know—what were the compressed drugs called ?—I know that the word "tablet" in connection with medicinal articles has been used for a vast number of years.

1440. Can you give my Lord any other names that were used in
E connection with compressed drugs ?—Oh, yes; there are various articles that are somewhat similar to compressed drugs, but I do not know how much compression they may have received.

1441. But can you remember any other name ? That is what I want to know. Can you recall any name they used to go by before "tabloid"
F was heard of ?—In addition to "tablet," do you mean ?

1442. Yes ?—I do not for the moment, but there is no doubt there were others.

Cross-examined by Mr. Walter.

1443. I am just going to ask you for your definition again in order to
G see that I have not misunderstood you. This, as I understand you, is your definition of "tabloid": "a small piece of matter associated with the name of Burroughs & Wellcome of a medicinal character" ?—Yes, that is the definition I gave just now.

1444. And that is your view of what is generally understood by the
H term "tabloid" ?—Yes, I think I can say yes to that question.

1445. You are not a doctor, of course ?—I am not a Doctor of Medicine.

1446. No, that is what I meant; I was using the word in its vulgar sense—you are not a Doctor of Medicine ?—No, I am not a medical
I practitioner.

1447. That is a better way of putting it. We will define it in that way. You are not a pharmaceutical chemist either, you do not supply drugs ?—No, I do not.

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Prof. J. Attfield.

1448. And you are not the public?——

Mr. Justice BYRNE: The witness does not cease to be a member of the public because he is eminent in other respects, Mr. Walter.

Mr. WALTER: No, my Lord, I quite agree.

1449. I want precisely to know in what character you are coming to give evidence here. You are coming as representing what branch of the realm?—Well, the only answer I can give to that question is that I gather that is what the learned Counsel who examined me asked me, and I think I stated it, that I had been for many years connected both with the medical profession and with the pharmaceutical body, because I had been with regard to pharmacy, Professor of Practical Chemistry to the Pharmaceutical Society, and because, in connection with medicine, I had been the editor of the "British Pharmacopœia" for the Medical Council.

1450. Then perhaps you will be able to tell us this. Can you tell us whether the word "tabloid" was a word commonly used amongst the public?—Well, I have known it used by my own relatives and friends, and they, I think I may say, are part of the public.

1451. Quite so?—And I am also sure that they always meant Burroughs & Wellcome's articles.

1452. You are quite certain of that?—Oh, yes, quite.

1453. And did they mean "small pieces of matter of a medicinal character"?—Yes, they did.

1454. Unassociated with shape?—Well, as far as I remember they nearly always alluded to saccharin tabloids.

1455. Saccharin tabloids?—Yes.

1456. And that is the only association in which you have heard the term "tabloid"?—That is the only one I am quite familiar with. I know they meant Burroughs & Wellcome's article, as they have always called it so, and I have seen them using it, and so on.

1457. What was the shape—tabloid shape?—It was the shape that Burroughs & Wellcome have always adopted for their articles.

1458. Let us get this a little more definitely. I will just put an example to you. Take food—compressed food in tabloid form—you would have no doubt what the shape was?—I have always associated the word "tabloid" with the articles produced and sold by Burroughs & Wellcome, and that is what I should understand—the shape which they have adopted and made so prominently public.

1459. Would you understand any shape, or any particular shape?—Yes, the particular shape that they have always used.

1460. And you do not think that the word "tabloid" has any wider meaning than that?—No, I do not think it has.

1461. What should you consider "knowledge" in tabloid meant?—I do not understand your question.

1462. Knowledge in tabloid form—what should you consider was meant by that——

1463. Mr. Justice BYRNE: Supposing some facetious newspaper talked of getting knowledge in tabloid form, what would that convey to

your mind ?—I should understand that quite well from my knowledge of Burroughs & Wellcome's articles.

1464. Mr. Justice BYRNE: That it was in a compressed form ?—Yes, my Lord.

A 1465. Mr. WALTER: I see, always associated with them. You mean the first thing that would occur to you would be, "Halloa, here is another of Burroughs & Wellcome's advertisements"?—It would immediately occur to me—the term which Burroughs & Wellcome had made familiar.

B 1466. And that is what you really had associated in your mind—that if you saw that facetious newspaper you would say, "Halloa, here is another good advertisement for Burroughs & Welcome"?—Yes.

Re-examined by Mr. NEVILLE.

1467. The drugs that they sell are very highly compressed, are they

C not ?—The drugs to which we are alluding, do you mean ?

1468. Yes, Burroughs & Wellcome's drugs, the tabloid drugs, they are very highly compressed, are they not ?—Oh, yes.

1469. You told us you were the editor of "The British Pharmacopœia" for the Medical Council ?—Yes.

D 1470. Can you tell me when the last edition of that work came out ?—In 1898 the "Pharmacopœia" itself.

1471. And have there been any supplements since ?—Yes, there has been an addition or rather an addendum.

1472. And that was in what year ?—1900.

E 1473. And that is the last ?—Yes, that is the last.

Dr. FRANCIS DE HAVILLAND HALL, sworn.

Examined by Mr. NEVILLE.

1474. Are you a Doctor of Medicine and a Fellow of the Royal College of Physicians ?—I am.

F 1475. And do you live at 47, Wimpole Street ?—I do.

1476. How long have you been in practice as a physician ?—For 30 years.

1477. Do you know the word "tabloid"?—I do.

1478. In connection with compressed drugs ?—Yes, in connection

G with compressed drugs.

1479. Does the name in your opinion refer to the product of a particular maker, or not ?—Yes, solely to the make of Burroughs & Wellcome.

1480. Does your recollection carry you back before the tabloids came into the market ?—Yes, certainly.

H 1481. Were there any compressed drugs on the market then ?—Yes, not so convenient as theirs, but still they were in use.

1482. They were in use, and articles of commerce then ?—Yes.

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Dr.
F. De H. Hall

1483. Do you remember Messrs. Burroughs & Wellcome bringing their tabloids out and placing them on the market ?—I do.

1484. At that date were there other compressed drugs on the market under various titles ?—There were. I can remember especially ~~White's~~ Wyeth's for instance. A

1485. Have you ever, in your experience, found the word "tabloid" applied to the goods of any other maker than Burroughs & Wellcome ? —Never.

1486. Do you, in your prescriptions, prescribe tabloids ?—Yes, frequently. B

1487. And when you so prescribe, what do you intend to be supplied by the pharmacist ?—The preparations of Burroughs & Wellcome only.

1488. Has your attention been called to the advertisements of Burroughs, Wellcome & Co. in the medical journals ?—I have generally seen their handbook ; they send me their handbook yearly. I do not look C at advertisements very much.

1489. You say you have received their handbook for some years past ? —Oh, yes, for many years past.

1490. Do you sometimes put the initials "B. W. & Co." after the particular tabloid mentioned in your prescription ?—Of late years D generally.

1491. But in the past have you simply used the word "tabloid" alone ?—Oh, frequently in the past.

1492. And do you do so still ?—Well, occasionally in the hurry of the moment I omit the initials "B. W. & Co." E

1494. In all cases what do you mean the chemist to prescribe, whether you put the word "tabloid" or the initials ?—Solely the preparations of Burroughs & Wellcome.

1494. Did you ever hear the word "tabloid" at all before it was used by Messrs. Burroughs, Wellcome & Co. ?—No, never. F

1495. In your opinion does the general use of the word "tabloid" in the profession refer to Messrs. Burroughs and Wellcome's goods ?—I never heard any of my professional brethren make use of the word except in reference to that particular connection.

1496. You mean Burroughs & Wellcome ?—Quite so. G

1497. You, of course, come across nurses a good deal ?—Yes.

1498. And should you say the same thing about them ?—Well, as a consultant I have not very much to do with nurses. I see the general practitioners but not the nurses, so much.

1499. Then I will not ask you about it. Have you any knowledge of H the user by the public or by anyone else of the word tabloid except in the sense of meaning Burroughs & Wellcome's preparations ?—No, except the facetious use of the word about knowledge in tabloid form in a newspaper.

1500. Oh, that did come across your attention ?—Yes. I

1501. I suppose Burroughs & Wellcome are about the best known firm of compressed medicine makers ?—Well, I should think they probably are the best known—the best known to me, at all events.

Cross-examined by Mr. WALTER.

1502. Of late years I understand you have added "B. W. & Co." in writing out your prescriptions?—I have.

A 1503. As the word has become better known it has become necessary to be certain by adding "B. W. & Co."?—As their drugs have become better known attempts have been made to imitate them.

1504. But not associated in your mind with a little doubt as to the general use of the word tabloid?—Not the least doubt as to the use of the

B word.

1505. Not *ex abundanti cautela*, but B. W. & Co. has been added?—Exactly. The legal phrase exactly expresses my view on the matter.

1506. Beyond "Knowledge in tabloid form," the word tabloid has not come under your notice at all?—I mentioned an exception.

C 1507. With that exception?—I do not know any other example.

1508. Your patients do not use the word tabloid, I suppose?—I do not, as a rule, discuss the matter with my patients. I order them.

1509. I know, but do not they ask you whether they can have it in tabloid form?—I should say, "Yes," and immediately order Burroughs

D & Wellcome's medicine.

1510. You put in "tabloid B. & W."?—Yes B. & W.

1511. Very often prescriptions are written short—"tab."?—I never employ it.

1512. That is not your practice?—No.

E 1513. Or you use Latin—it is a more dignified and ancient tongue?—In view of these preparations of Burroughs & Wellcome's one cannot use Latin for that—I mark the "R" and put, say, "salol tabloids," or whatever the name may be.

1514. You have had, I suppose, the literature which Messrs.

F Burroughs & Wellcome distribute so freely?—Yes, every year as I say they send me their doctor's book containing the list of tabloids.

1515. Perhaps you have noticed the change in the tone of the literature of late?—I am afraid I have confined my attention entirely to the list of drugs. My time is too valuable to read advertisements.

G 1516. If there should be any, they find their place in the usual receptacle?—Quite so.

1517. You cannot tell us at all of the general use of the word "tabloid"?—No, I do not discuss the question of tabloids with patients or the public generally.

H 1518. It indicates something to you?—A compressed drug made by Burroughs & Wellcome.

1519. Shape?—Shape is immaterial. It must be simply a compressed drug. It might be square or oblong or oval or round—any compressed drug made by Burroughs & Wellcome would be to me a tabloid.

I 1520. The shape has never entered your head at all?—Not at all.

1521. Did you ever think of the derivation of the word?—I look upon it as an arbitrary form of word—one of those wretched hybrid words.

1522. So frequently used by the medical profession?—Yes, I am sorry to say.

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Dr. F. De H. Hall

1522. "oid" conveys no meaning to your mind ?—Most distinctly—a compressed drug made by Burroughs, Wellcome & Co.

1524. No, "oid"?—I remember sufficient of my Greek knowledge to know that.

1525. Philology has not interested you much ?—Very much, indeed ; it is one of my pet subjects. A

1526. What does "oid" mean ?—I think the general acceptation is "idos," the Greek for "like."

1527. To you, as a philologist, "tabloid" is a word pregnant with meaning ?—It is a hybrid word. B

1528. I do not want you to do your philological knowledge injustice. It is a word pregnant with meaning—"tabloid"?—It is rather——

1529. Come, now, let us talk of philology ?—It is rather difficult to know the derivation of what that first syllable "tab" is—it may be "tabella." I have vainly endeavoured to find out what the "tab" meant ; C I have never got beyond that.

1530. You have burnt the midnight oil on the subject of tabloids then ?—I have thought of that first syllable "tab," but I have never satisfied myself of the derivation of that "tab."

1531. It is quite meaningless except as connected with Burroughs & D Wellcome's goods ?—Quite meaningless.

Re-examined by Mr. Neville.

1532. As far as your experience goes, have you ever known of any use of the word except in reference to Burroughs, Wellcome & Co.'s. goods ?—No. E

1533. You have not come across them in your experience ?—No.

Mr. Justice BYRNE : Have you many more witnesses like this ?

Mr. NEVILLE : Although we have a good many, we have only selected a small proportion of those whose Proofs we have.

Mr. Justice BYRNE : How many gentlemen do you propose to call F of that class you have already called ?

Mr. NEVILLE : I think altogether we have about 30 medical men.

Mr. Justice BYRNE : Cannot you take those which you have at present as fair specimens ? Mr. Walter will not make any comment.

Mr. WALTER : Certainly. G

Mr. Justice BYRNE : You say you are ready to call 30. You can pick out some few, perhaps, who represent a different class of practitioners. I do not see any particular use in going through 30 different gentlemen who all give evidence of this description. You say you have 30 more. Mr. Walter will make no observation if you do not call all of H them.

Mr. WALTER : I should make no observation.

Mr. NEVILLE : They are, to an extent, representative witnesses. Your Lordship knows I would not, if I thought it unnecessary, put them in the witness box. I

Mr. Justice BYRNE : After what I have said I will leave it to your discretion.

Mr. NEVILLE: We have very carefully considered it, and we will take it as shortly as we can. I am afraid we must ask your Lordship to let us put the witnesses in the box this time.

Dr. LAURENCE ELIOT CREASY, sworn. Dr. L. E. Creasy.

Examined by Mr. LEVETT.

1534. I think you are a member of the Royal College of Surgeons?—Yes.

1535. And of the Royal College of Physicians as well?—Yes.

1536. I think you are the editor of the "Clinical Journal"?—Yes.

1537. And you contribute largely to the "British Medical Journal"?—Yes.

1538. How long have you been in practice?—Nine years.

1539. How long have you been acquainted with tabloids?—10 years.

1540. What does the word "tabloid" convey to your mind?—A product manufactured by Burroughs, Wellcome & Co.

1541. Has it ever had any other meaning to your mind?—No.

1542. Have you ever known it applied to anyone else's manufacture?—No.

1543. Have you seen the advertisements in the different medical papers?—Yes.

1544. Has it ever been applied in those advertisements to anyone else's manufacture?—No.

1545. When you prescribe yourself how do you use the word "tabloid"?—I put "tabloid" alone—simply the word "tabloid" for whatever product I wish to prescribe.

1546. Do you ever put the initials like the last witness sometimes does?—No.

1547. When you prescribe tabloids what do you expect your patient will get?—The product of Burroughs, Wellcome & Co.

1548. As far as you know in the medical profession, what meaning has the word tabloid?—The product of Burroughs, Wellcome & Co.

1549. I think you live in Welbeck Street, do not you?—Yes.

1550. What meaning do the chemists in that district so far as you know attach to tabloid?

Mr. WALTER: Really!

The WITNESS: I happened to be in Vere Street at Allen & Hanbury's——

Mr. Justice BYRNE: Mr. Walter objects.

Mr. LEVETT: Then I will not press it.

Mr. WALTER: If you are going to call chemists in that district well and good.

1551. Mr. Justice BYRNE: When you prescribe it you know what you expect chemists will provide?—Burroughs & Wellcome's goods.

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Dr. L. E Creasy.

Cross-examined by Mr. WALTER.

1552. All you understand is it is a product of Burroughs, Wellcome & Co.'s ?—A product manufactured by Burroughs, Wellcome & Co.

1553. Whether it is liquid, solid, or whatever it is, it is all the same ?—That is right.

1554. Whether it is liquid, solid, or anything, that is what you understand tabloid means ?—A product of Burroughs, Wellcome & Co.

1555. Nothing to do with shape ?—No.

1556. Or proportion or anything of the kind ?—The name guarantees the purity of the product. That is why it is used.

1557. Liquid or anything ?—If it was liquid it would be perfectly purely put up.

1558. Your practice, if you are prescribing a liquid and want Burroughs & Wellcome's, is to call it "tabloid" ?—No, I have not used it in that way. I do not remember ever having prescribed liquid in the way of tabloid. If I put down "tabloid," and I knew they were preparing a tabloid in liquid form——

1559. "If I knew they were preparing a tabloid in liquid form," what do you mean by that ?—I mean——

1560. What do you mean by that sentence you just said: "If I knew they were preparing a tabloid" ?—If I saw it in their list.

1561. I use the sentence you used: "If I knew they were preparing a tabloid." What do you mean by that ?—I mean if I saw it in their list.

1562. If you knew they were preparing a tabloid—it dropped out, and I want to know what you meant ?—I do not know what you mean.

1563. That is the sentence you used: "If I knew they were preparing a tabloid"——

Mr. NEVILLE: We all heard it.

1564. Mr. WALTER: I want to know what he means by that ?—If I saw it in the list.

1565. No, answer the question ?—If I saw in the list they were preparing such.

Mr. Justice BYRNE: I do not think Dr. Creasy is trying to avoid answering your question. Just explain it gently to him.

1566. Mr. WALTER: I quite agree, my Lord. The sentence you said was: "If I knew they were preparing a tabloid." Now I want to know what you meant by a "tabloid" ?—They are preparing tabloids of phenacetin if I saw it in the list. I knew that they were preparing a tabloid of phenacetin.

1567. What does tabloid mean ?—A product of Burroughs, Wellcome & Co.

1568. Quite apart from shape and anything of the kind ?—Yes.

1569. That is your view ?—Yes.

Mr. GEORGE CLARIDGE DRUCE, sworn.

Examined by Mr. NEVILLE.

1570. You live at 118, High Street, Oxford ?—Yes.

1571. And you are a pharmaceutical chemist ?—I am.

A 1572. I see you are president of a good many societies ; you are also a member of the Board of Examiners of the Pharmaceutical Society of Great Britain ?—I was for 10 years.

1573. I think you are a past mayor of Oxford, and chairman of the Sanitary Committee of Oxford City ?—That is so.

B 1574. At 118, High Street, Oxford, do you carry on the business of a dispensing chemist ?—Yes, I do. I have done for nearly 24 years.

1575. How long have you been associated with the business of a pharmaceutical chemist altogether ?—I am afraid a long number of years —five and thirty years.

C 1576. Do you remember the tabloid first coming upon the market ?—I am not clear as to the date, but I should think I have knowledge of it about 16 years.

1577. That is the time ago, but do you remember years ago your attention being called to tabloids ?—Oh, yes.

D 1578. With what did you associate the word "tabloid" at that time ? Always with Burroughs, Wellcome & Co.

1579. As their make ?—As their make.

1580. And you do so still ? I do so still.

1581. Throughout all that time have you ever known any other maker E sell tabloids ?—I have never heard of them.

1582. At the time when the tabloids came upon the market were there other compressed drugs being sold ?—To a very small extent.

1583. Do you remember the name of Brockedon ?—Yes, that is what I had in my mind. They made two preparations so far as I remember, F bicarbonate of soda and bicarbonate of potash.

1584. They were compressed ?—They were compressed, yes.

1585. What was the shape in which they sold them ?—So far as I remember they were not quite spherical, but smaller than Burroughs, Wellcome & Co.'s tabloids.

G 1586. Were they bi-convex, or what, in shape ?—I should hardly think they were bi-convex, they were rather small circular cylinders.

1587. Do you remember the term "compressed pellets, perles, compressions," do you remember those as titles of goods that were on the market ?—Just vaguely, yes.

H 1588. And to your experience, are tabloids well known in the chemists trade ?—I am afraid, I was going to say much too well known.

1589. Are they known as the make of Messrs. Burroughs, Wellcome & Co. ?—Entirely so.

1590. Do Messrs. Burroughs, Wellcome & Co. advertise largely in I the trade journals ?—Yes.

1591. And you, I daresay, see the advertisements. Well, we know that ; I do not need ask you that. Did you ever hear the word "tabloid"

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Mr. G. C. Druce.

until you heard of it in connection with Burroughs, Wellcome & Co.'s manufacture ?—Certainly not.

1592. We have heard of the great difficulty that is found by chemists in dispensing Messrs. Burroughs & Wellcome's goods under the name "tabloids," have you found any difficulty in that respect ?—No, scarcely ever.

1593. Supposing that a prescription is given you including tabloid, what should you consider it your duty to supply ?—We are bound to supply Messrs. Burroughs, Wellcome & Co.'s, I take it

1594. Supposing a customer asks you for or you find in a prescription a reference to tabloid, which you do not keep, or which Messrs. Burroughs, Wellcome & Co. do not make, what is the proper course for a chemist to take ?—Then I have to consult the doctor and ask him.

1595. You have to consult the writer of the prescription ?—Yes.

1596. It is suggested that the public understanding of the word is different from the meaning that you have given to us. Have you any reason to suppose so, or do you find that the public use the word "tabloid" in the sense in which you have used it ?—I think they use it quite as I have used it. Of course there is a large number of these preparations, and sometimes for dispensing purposes we have larger bottles than the ordinary ones, and occasionally it may happen that a customer wants his shilling bottle of a certain drug, and we have not it in that form. I say : "We have got them loose ; I can give it you in one of our bottles." He says : "But are they Burroughs, Wellcome & Co.'s ?" and I have to show they have come from Burroughs, Wellcome & Co.'s package.

1597. Do you ever remember any mistake in the public use of the word "tabloid," including other than Messrs. Burroughs, Wellcome & Co.'s ?—No. I have heard of a confusion between "soloid" and "tabloid."

1598. But they are both Burroughs, Wellcome & Co.'s preparations ?—They are both Burroughs, Wellcome & Co.'s preparations.

1599. And do you think the meaning of the word "tabloid" is well known in the chemist's trade ?—I should say quite well known.

Cross-examined by Mr. WALTER.

1600. You carry on business at Oxford ?—Yes.

1601. And I suppose you get some prescriptions ?—Yes, we have had some hundreds of thousands, I was going to say.

1602. And "tabloids" are occasionally to be found in those ?—Very frequently, unfortunately.

1603. It is not at all good for the chemists' trade ?—No.

1604. And they are frequently associated with the term B. & W. ?—Very often so.

1605. May I take it that in nine cases out of ten whenever the word "tabloid" is used the medical gentleman who is putting his signature puts "B. W." or "B. W. & Co." after it ?—I think it is becoming unfor-

tunately the practice of medical men to put initials over every article they write.

1606. That is your experience of the practice of medical men ?—It is a growing practice unfortunately.

A 1607. Your experience is that the medical man, of recent years, in specifying puts the manufacturer's name if he wants a particular manufacture ?—Yes.

1608. I suppose the public come in without prescriptions and ask for drugs ?—Yes.

B 1609. That again is an unfortunate habit the public have learned ?—Oh, no.

1610. They come and ask for tabloids ?—Frequently.

1611. Have you ever asked for tabloids which are not on Burroughs, Wellcome & Co.'s list ?—No; I think it would be absolutely impossible.

C 1612. Perhaps you do not deal in any of the homœopathic remedies ?—No.

1613. And you have never been asked in Oxford for a tabloid that was not on Burroughs, Wellcome & Co.'s list ?—Not that I remember.

1614. Shall I get at the public through you ? Do you see the public

D yourself, or your assistants ?—Both.

1615. And, speaking from your experience, you have not been asked for any ?—I do not think I ever remember being asked for any tabloid which was not in their list.

1616. If a person asks for "tabloid" merely, what do you do ?—

E Always sell what I am asked for—Burroughs, Wellcome & Co.'s preparations.

1617. Do you keep any other compressed drugs ?—Yes, other compressed drugs. I am not quite certain even whether I do. Yes, I suppose there would be some photographic things, probably, now.

F 1618. Perhaps you do not deal with Parke, Davis & Co. ?—Yes.

1619. For their compressed goods ?—Not for their compressed goods, no.

1620. Allen & Hanbury ?—Yes, only for jujubes, not for drugs.

1621. You do not deal in any of their compressed goods ?—No.

G 1622. Are there any other manufacturing chemists with whom you deal for compressed goods ?—No.

1623. You never have been asked for any goods that you have had any difficulty in supplying ?—Oh, dear no. Of course, we may not have had them in stock.

H 1624. Phosferine do you sell at all ?—Yes, occasionally.

1625. In a compressed form ?—I really never open the package. It is a patent medicine, and I never trouble with the contents of a patent medicine.

1626. Or ammonal ?—No, I am afraid I only just know it as a name.

I I do not open those packages, and we sell them as rarely as possible.

1627. Have you any compressed drugs of your own ?—No.

1628. You do not deal in any compressed drugs of your own ?—No.

1629. No special preparations of Mr. Druce ?—No.

1630. You entirely confine yourself to Burroughs, Wellcome & Co. ?

—As far as compressed goods are concerned. I have always thought they were the best, and I know they were the original producers.

1631. Do the public know the shape ?—Oh, yes, the public would know. When they ask for a tabloid they expect to get it.

1632. But what sort of article do they expect to get ?—It varies probably according to the medicament employed. They are not all the same size.

1633. But they are all about the same shape, are not they—bi-convex ?—More or less so, I suppose.

1634. You have no knowledge, and you cannot tell us as to the general use of " tabloid " ?—I only know it as a speciality of Burroughs, Wellcome & Co.

1635. That you have had impressed upon you, of course, by literature every year ?—And from actual knowledge.

1636. But I mean your knowledge has been gained by having it impressed upon you by literature ?—Yes. We are very careful. When the doctor writes a prescription for a tabloid he expects to get, I take it, Burroughs & Wellcome's preparation.

1637. But the majority of medical men, you have told us, let you know what they do mean—Burroughs, Wellcome & Co.'s ? - But we are sometimes a little in doubt.

1638. I quite understand your being a little in doubt. Tabloid alone is a very difficult word. You do not quite know what it does mean without B. & W. ?—I should take it as being their preparation.

1639. Have you ever had " tabloids " in a medical prescription which does not exist in Burroughs, Wellcome & Co.'s list ?—Once, I think, but then it was associated unfortunately with the name of another firm by mistake. There I was in a difficulty. Was I to supply tabloids or the preparation of the firm whose initials were put ? I saw the doctor and he crossed the initials off.

1640. And left " tabloids " ?—Yes, and then I had no difficulty.

1641. No difficulty at all ?—Not the least.

1642. What initials did he put on ?—Oppenheimer's.

1643. Oppenheimer's sell compressed medicines ?—Yes, but they have a different name.

1644. The same shape, are they not ?—Not quite the same character I think.

1645. Practically the same shape——

Mr. NEVILLE: He does not say so.

1646. Mr. WALTER: Are they the same shape or not ?—No, I should not have said they were. I should have recognised the difference I think between the bi-palatinoid and a tabloid.

1647. The business is not quite gone away. Chemists do still make up drugs ?—Yes, occasionally.

1648. Have you ever been asked to make them up in tabloid form ? —Oh, no. I have not been asked to do it.

1649. Have you ever been asked to make them up in compressed form ?—Cachêts, frequently.

1650. That is not compressed ?—No.

1651. You have never had to make them up in tabloid form?—No.

1652. Tablet is of course a very familiar term to use?—Not very familar. We had Wyeth's little chlorate of potash tablets.

1653. Mr. Justice BYRNE: Have you machinery in your shop to make them up in that form?—No. If there was a demand we should do it, but there is not such a demand.

1654. Mr. WALTER: Tablets you do know?—Yes.

1655. They were Wyeth's?—Yes.

1656. "Tablets" were afterwards Burroughs, Wellcome & Co.'s?—Yes, they took them over, I believe.

1657. "Tablets" are Allen & Hanbury's?—I really forget whether they are or not. I think it is so, yes.

Re-examined by Mr. NEVILLE.

1658. You gave an answer which was clear to my mind but which might not have been clear altogether. You said in the case of tabloids where there was a difficulty owing to the initials being of another firm, you went to the doctor and he struck the initials off and there was no difficulty then?—No difficulty.

1659. What did you supply then?—Burroughs & Wellcome's, of course. A doctor will sometimes in a hurry just make a slip of a pen in any drug, and we have just occasionally to go and say "Did you really mean what you wrote?" and he says "No." It was just the same in this case. He said, "Oh, no," and he struck the word off. The difficulty as it seemed to me was that one might have a complaint by the other firm that we did not supply their thing.

1660. I only want to know you did dispense Burroughs & Wellcome's product?—Quite so.

Mr. ROBERT McADAM, sworn.

Examined by Mr. LEVETT.

1661. I think you are the General Manager of the Glasgow Apothecaries' Company?—Yes.

1662. They are wholesale and retail chemists?—Yes.

1663. They carry on their business at 32, Virginia Street, Glasgow?—Yes.

1664. I think you have been in business there for 42 years?—Yes.

1665. For how long have you been acquainted with the word "tabloid"?—I do not know the exact number of years since it was introduced.

1666, How was it introduced?—By Burroughs, Wellcome & Co.

1667. Before that time had you ever heard the word "tabloid?—No.

1668. Do you remember at that time if there were some other compressed drugs on the market?—Yes, there were.

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Mr. R. McAdam.

1669. Were there Brockedon's?—They called them "Brockedon's patent pills"—compressed bicarbonate of potash and bicarbonate of soda.

1670. Did Cooper make any compressed drugs?—I am not sure. I think so, but I could not be sure.

1671. What was the peculiarity about the compressed drugs that Burroughs, Wellcome & Co. put on the market. What were they remarkable for in any way?—The name you mean? They were called "tabloids."

1672. What were the characteristics of the tabloids?—I do not exactly understand what you mean by "the characteristics of them."

1673. What were the merits of them?—They were made of compressed drugs.

1674. What were their merits——

1675. Mr. Justice BYRNE: Had they any special merits over other compressed drugs in the market, and, if so, what do you think they were?—I do not say they have any special merits over any other compressed drugs.

1676. Mr. LEVETT: Have you ever heard the word "tabloid" used with respect to anybody else's goods except the goods of Burroughs, Wellcome & Co.?—I have seen an order come from a medical man in the country ordering another make, and calling it "tabloids"—one, I think, to my knowledge.

1677. What did you do in that case?—They ordered Parke, Davis and Co.'s, but I think Burroughs, Wellcome & Co. did not make the same preparation, and we sent Parke, Davis & Co.'s tablets. That is my belief.

1678. Mr. Justice BYRNE: About when was this—how long ago?—About three weeks ago.

1679. You think this was the first time it ever happened to you?—Yes.

1680. Mr. LEVETT: Has the word "tabloid" any recognised meaning in the trade?—It means the compressed drugs manufactured by Burroughs, Wellcome & Co.

1681. Do you sell retail as well as wholesale?—Yes.

1682. When a prescription comes in for tabloids what do you supply?—Burroughs, Wellcome & Co.'s make.

1683. Do you know what sense the trade attaches to the word "tabloids"?—I do—the preparations made by Burroughs, Wellcome & Co.—compressed drugs.

1684. Is this your catalogue. (Handed to the Witness)?—It is.

Mr. LEVETT: I will put it in.

(Catalogue put in and marked R.M. 1.)

Cross-examined by Mr. WALTER.

1684A. You get a good many medical prescriptions, of course?—Yes, but I am the manager of the wholesale part; we have a retail manager.

1684B. They do not come before you?—No, they do not.

1684c. So you cannot tell us what the practice of medical men is in writing prescriptions ?—I know. I have seen them come in, of course.

1684d. You agree, I suppose, with several other witnesses, that the common practice now is to be put " B. W. & Co." ?—Yes.

A 1684e. It is the common practice to put " B. & W." or " B. W. & Co." on their prescriptions ?—Yes.

1684f. You, of course, have received the literature of Messrs. Burroughs & Wellcome ?—Yes.

1685. A large quantity of it ?—Not a large quantity. We get their

B price list every month, or as often as they issue it.

1686. You are aware that they have alleged that they have registered the trade mark ?—Yes.

1687. You knew that they claimed the word " tabloid " as a trade mark ?—Yes.

C 1688. And told you that they had registered it ?—Yes.

1689. And I believe in their monthly circulars they have warned people from time to time that that is their trade mark ?—Yes, they did.

1690. And that the penalty for infringing that trade mark will be severe ?—I do not know that they have said so.

D 1691. They have warned people against infringing their trade mark ? —Yes, they have.

1692. That has been in their literature ; throughout their literature of recent years they have kept on insisting on their registered trade mark ? —Yes, I think so.

E 1693. That the word " tabloid " was their Registered Trade Mark ? —Yes.

1694. That you knew of ?—Yes.

1695. Of course, one does not like infringing trade marks—you did not like infringing trade marks ?—I had no objection to it.

F 1696. Mr. Justice BYRNE : I am not quite sure whether you appreciated the question. What Counsel asked you was : " You did not like infringing trade marks " ?—I thought it was : " Printed trade marks."

1697. To which you replied you did not mind at all ?—I did not catch

G the question.

1698. Mr. WALTER : You do not like infringing trade marks ?—Certainly not.

1699. Yours is the wholesale department, is it ?—Yes.

1700. So you do not come in contact with the public ?—Not very

H much—occasionally.

1701. I will assume that you say " the manufacture of Messrs. Burroughs & Wellcome " ; but what is " tabloid " associated in your mind with, apart altogether from Burroughs & Wellcome ?—Nothing but their preparations.

I 1702. It has never associated itself with anything else—it has no meaning in your mind ?—No, none.

1703. " Tabloid " has no meaning in your mind ?—Except that it means Burrough's & Wellcome's compressed drugs. That is the only meaning it has with me.

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Mr. R. McAdam.

1704. Has it any association with "tablet" at all?—It may have, but I know well that "tabloid," when it is asked for, is Burroughs & Wellcome's. That is their name entirely.

1705. You have never troubled what it meant?—Never.

1706. Do the public ask for "tabloids"?—Yes, they do in the wholesale. I do not know very much about the retail side.

1707. You are only dealing with other chemists in the wholesale department?—Yes, but we have retail also.

1708. You personally are only concerned with the department in which your customers are chemists?—That is so.

Re-examined by Mr. NEVILLE.

1709. You deal in a variety of manufacturers' goods?—We do.

1710. Burroughs & Wellcome are merely one amongst many?—Yes.

1711. The price list that you have put in shows the way in which you list them for your customers?—Yes.

Mr. G. H. Burroughs.

Mr. GEORGE HENRY BURROUGHS, sworn.

Examined by Mr. NEVILLE.

1712. Is your address 58, Hanover Street, Liverpool?—Yes.

1713. Are you the managing director of Messrs. John Thompson, Limited, wholesale druggists?—Yes.

1714. How long have you been associated with the business as a pharmaceutical chemist?—About 30 years.

1715. Do you know the trade well?—I think so.

1716. Are "tabloid" and "tabloids" well known in the trade?—Well known.

1717. What do "tabloid" and "tabloids" mean?—It is a fancy name given to Messrs. Burroughs & Wellcome's preparation of a compressed drug.

1718. Should you say that is common knowledge in the trade or not?—Common knowledge.

1719. Just look at *that* and tell me if that is one of your price lists?—It is one of our price lists in relation to patent medicines and proprietary articles.

(Exhibit put in and marked G.H.B. 1.)

1720. You sell a variety of them?—A great many.

1721. Amongst others you sell Burroughs & Wellcome's preparations?—Yes, we do.

1722. And list them as appears in the book there?—Exactly so.

Mr. NEVILLE: I think, my Lord, the blue marks will show the references.

Mr. Justice BYRNE: I see there is a special notice in this one on "Tabloid Brand Trade Mark Products," and it is in brackets—"The

word 'Tabloid' indicates that this brand of fine products is prepared by B. W. & Co."

1723. Mr. NEVILLE: Have you listed them under the name of "tabloid" for a number of years?—Yes.

A 1724. Do you recollect "tabloids" coming on the market?—Very well.

1725. At that time were there other compressed drugs being sold?—Yes, but not, of course, to the extent that there are at present.

1726. They were known articles in the market?—There were other

B articles in the market.

1727. When these were brought out?—Yes; when Burroughs first came over to this country.

1728. Was there anything special in the drugs. They came out as compressed dugs?—They came out merely as compressed dugs.

C 1729. Was there anything special in the shape; were there other bi-convex discs that you had seen before that?—I think Wyeths' were the same shape—I am not very positive, speaking from memory now; but I think John Wyeth's were more or less of the same shape.

1730. Do you remember Brockedon?—Very well; we actually stock

D them to this day.

1731. Were they of a similar shape?—I have never seen them opened. I said: "Very well," but Brockedon's are put up. It is a proprietary article and I have never seen it undone. We never bother very much about what is inside with patent medicines.

E 1732. Were they something like what we all used to be familiar with years ago—acidulated drops are bi-convex discs, are they not?—Yes.

1733. They are as old—— ?—As old as I am.

1734. The memory of man runneth not to the contrary, I think?—

F Exactly so.

1735. Did you ever hear of the word "tabloid" before it came on the market as Burroughs & Wellcome's word?—Never heard it before.

1736. I forget whether I have asked you this—I do not think I have: Have you ever known any other makers sell their goods under the name

G of "tabloid"?—Never.

1737. Do you come across the public at all in your business?—No, practically not.

1738. You are entirely wholesale?—Purely wholesale.

1739. You can properly speak to the knowledge of the trade, but not

H outside?—Exactly. I have a fair knowledge of the outside. I was in the retail trade before.

1740. You were?—I served my apprenticeship in the retail trade some years ago.

I 1741. Have you any knowledge of the public——

Mr. Justice BYRNE: He served his apprenticeship a long time ago.

The WITNESS: I am not clear about the public.

1742. Mr. NEVILLE: And you would rather not say anything that?—Yes, I would rather not say anything about that.

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Cross-examined by Mr. WALTER.

Mr. G. H. Burroughs.

1743. May I take it yours is entirely in the wholesale business?—Entirely wholesale.

1744. You do not see doctors' prescriptions?—I have seen doctors' prescriptions. A

1745. In the ordinary course?—Not in the ordinary course of business.

1746. You buy goods from the manufacturers and sell them to the retail people?—Exactly so.

1747. In your catalogue in which my friend was reading a description about the trade mark and so on the matter is supplied by the manufacturers to you, I suppose?—It is supplied by the manufacturers to us. B

1748. And you insert in your list recommendations, warnings, and various other things?——

1749. Mr. Justice BYRNE: It does not come to that. I rather gather from your catalogue that you have some special terms, have you not, with Messrs. Burroughs & Wellcome? You praise them up and you say you always have a large stock of them on sale on the lowest terms?—We sell probably the largest—I will not say the largest, as I do not know other people's business—but possibly the largest stock in the Provinces; one of the largest, at any rate. C D

1750. At all events, you know quite well that they have registered the trade mark, and that they have claimed the right?—Perfectly well.

1751. You know that?—I know that they have done that.

1752. You know that they have registered the trade mark?—Yes. E

1753. I need hardly ask, but there is not a desire in the trade to infringe trade marks?—No, it is immoral.

1754. Never mind moralities. The trade does not like it?—You ask me a question, and I like to pass my opinion on it straight away.

1755. You are perfectly fair in saying that your acquaintance with the public was some time ago?—Over 12 years ago. F

1756. It was some time ago, I say?—Yes, it is 12 years since I had anything to do with the public.

1757. You do not feel that you can speak as to that?—No.

Mr. WALTER: Then I will not ask any questions about that. G

Mr. H. Peet.

Mr. HENRY PEET, sworn.

Examined by Mr. LEVETT.

1758. I think you live at 97, Mount Pleasant, and Ranelagh Place, Liverpool?—That is so.

1759. You are a magistrate?—I am. H

1760. And a member of the Pharmaceutical Society?—I am.

1761. How long have you been in business?—Upwards of 25 years—26 years.

1762. Do you remember tabloids being introduced?—Very well.

1763. Who introduced them ?—Burroughs, Wellcome & Co.

1764. At that time there were other compressed goods on the market ?—There were a few.

1765. Do you remember what they were ?—I think the only two I remember were Brockedon's and Wyeth's, but they were called compressed and the name of the drug—compressed chlorate of potassium or compressed bi-carbonate of soda. I do not think the word "tablet," or "pellet," or anything else, was used in connection with them, as far as my memory serves me.

1766. Before this time had you ever heard the word "tabloid" used in connection with goods ?—Not at all ; it was quite new.

1767. Has the word "tabloid" any recognised meaning in the trade now ?—Undoubtedly.

1768. What is the meaning of it ?—Every respectable chemist knows that it means Burroughs & Wellcome's products. Unfortunately there are members of our business who are not respectable, and I think possibly that is why the medical profession——

1769. We will not discuss morality ?

Mr. Justice BYRNE : You and Mr. Walter must exclude morality from this discussion.

1770. Mr. LEVETT : Have you ever known the word "tabloid" applied to any goods except goods used by Burroughs & Wellcome ?—Never.

1771. Do you do a retail trade ?—Yes, I have two businesses, or I had two, until just recently.

1772. Then you see the prescriptions the doctors send in ?—Yes.

1773. When anyone comes in for tabloids what do you supply the patients with ?—Burroughs & Wellcome's.

1774. Do you find that doctors put the initials, or simply tabloids ?—Occasionally—I do not know whether occasionally, but frequently, I may say, the letter B. & W. are added, but it very frequently happens that simply the word tabloids is written.

1775. When the letters B. & W. are added do they convey any additional meaning to your mind ?—None at all.

1776. Do you see the public who come into the shop to buy things ?—Yes.

1777. Can you tell me what idea "tabloid" conveys to them ?—I think there is no doubt to the public it means Burroughs & Wellcome's goods. They have been so extensively advertised that it has almost become a household word to the public.

Cross-examined by Mr. WALTER.

1778. Extensively advertised ?—Extensively.

1779. To the public ?—To the medical profession, and through the medical profession the public, and, I suppose, nearly every chemist's shop in the country has some of them in their windows, so that the public know them in that way.

1780. In your view, it is a household word ?—Now.

1781. Tabloid is distinctly a household world ?—Now.

1782. You know, of course, that Burroughs & Wellcome have registered the trade mark ?—Yes, I understand so.

1783. It appears in all their advertisements. Do you agree that the word tabloid generally now has B. & W. after it in doctors' prescriptions or B. W. & Co. ?—No, I do not say generally; very frequently it has, and very frequently not.

1784. Have you ever received any orders for tabloids, not on Messrs. Burroughs & Wellcome's list ?—Occasionally I have.

1785. What do you do ?—I communicate with the physician.

1786. Have you received orders for goods—repeat orders for the same customer ?—No, I do not think I have.

1787. You have never had a repeat order ?—As far as my knowledge goes.

1788. You know perfectly what is intended if "tabloid" is used, and it has not Burroughs & Wellcome's—— ?—I should communicate with the doctor.

1789. Is "tabloid" frequently used in medical prescriptions ?—Very frequently.

1790. In respect of drugs not supplied by Messrs. Burroughs & Wellcome ?—Not very frequently—very rarely.

1791. It is ?—Occasionally.

1792. Have you had medical prescriptions in which there are directions to put up the goods in tabloid form ?—To put up the goods in tabloid form ?

1793. Yes ?—No, I do not think I have.

1794. You do not recall having had any ?—I understand you mean a drug ordered to be put up in a tabloid form ?

1795. Yes ?—No, I do not think I have.

1796. You do not recall one. But tabloid has been used by doctors in connection with drugs other than those of Burroughs & Wellcome's ?—I think once or twice occasionally that has happened.

1797. Do you sell any homeopathic medicines ?—Yes.

1798. Have you ever had any of those ordered as tabloids ?—No.

1799. You never had any of them ?—No.

1800. Do the public come in and ask for a tabloid ?—Yes.

1801. Did you ever ask them what they meant ?—No, I know what that is.

1082. I do not ask whether you knew ?——

1803. Mr. Justice BYRNE: Do they come and ask for a single tabloid—do the public come in and ask you for a tabloid—that is what Mr. Walter asks ?—A single tabloid.

1804. They do ?—Yes, I think I may say the public do occasionally come in and ask for a single tabloid.

1805. Mr. WALTER: And ask for "tabloids" ?—They will sometimes. If a man has a headache he will ask for a phenacetin tabloid. But I notice that the public are very much wider awake than they used to be. They very frequently say "Burrough & Wellcome."

1806. The public ask for Burroughs & Wellcome ?—Very frequently.

1807. When they wanted—— ?—When they wanted a compressed preparation.

1808. Is there a drug called chinsol ?—Yes.

1809. Do you get asked for tabloids of that ?—Not by the public as a rule—it is ordered by medical men.

1810. It has been ordered as tabloids ?—I cannot say. I am not sure whether it has been ordered as tabloids.

1811. That is a proprietary medicine ?—It is a proprietary medicine.

1812. And not made by Burroughs & Wellcome ?—I am not quite sure who makes it.

1813. Have you ever had a case of the public coming in and asking for a tabloid or a drug which you knew Burroughs & Wellcome did not keep ?—No, I do not think I have. I do not recollect ever having done so.

1814. You have never been faced with that difficulty ?—No, I do not think so.

1815. You have never had to say to the person, "What do you mean by tabloid" ?—No ; I think not.

1816. Does not the public generally understand tabloid as meaning nothing else than little compressed tablets ?—Oh, dear no, the public are far too wide awake for that.

1817. You think the public are ?—Yes, they know there are too many imitations put on the market.

1818. You think the public generally knows all about it ?—I think they know that.

1819. What is the particular section of the public which you cater for ?—I have one business situate at the corner of Rodney Street, in which there are about 60 or 70 medical men, and my other business is situated in the heart of the city, near the Adelphi Hotel, the principal hotel in Liverpool, so I come in contact with I may say, the better class of people.

Mr. NEVILLE : Is chinsol the name you gave ?

Mr. WALTER : Yes.

Mr. NEVILLE : Because we do list it.

Mr. WALTER : In what year ?

Mr. NEVILLE : This year.

Mr. WALTER : As a tabloid ?

Mr. NEVILLE : Yes, as a tabloid.

The WITNESS : It would be probably for outward application, I suppose.

Re-examined by Mr. Neville.

1820. I want to ask one question. I think you told my learned friend that you had a recollection of on one or two occasions tabloids being prescribed of a drug not made up by Burroughs, Wellcome, & Co. ?—That is so.

1821. Did I hear you correctly ?—That is so.

1822. In that case what did you do ?—I immediately communicated with the doctor who had written the prescription.

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Mr H. Peet.

1823. You told my learned friend you thought now that tabloid was a household word ?—I do think so.

1824. In what sense is it used in the household according to your view ?—As representing the products of Burroughs, Wellcome & Co.

Mr. J. Foster.

Mr. JOHN FOSTER, sworn. A

Examined by Mr. Neville.

1825. Are you a chemist and druggist and are you in business at 479, Sanchiehall Street, Glasgow ?—Yes.

1826. And also 20, Cambridge Street in the same town ?—10, Cambridge Street. B

1827. How long have you been in business ?—28 years.

1828. How long altogether have you been associated with the chemists' business ?—Since 1867.

1829. Do you know the words tabloid or tabloids ?—I do.

1830. What do you understand it to mean.—The manufactured goods C of Burroughs, Wellcome & Co.

1831. How long have you associated that meaning with it ?—Since they invented it.

1832. From the first ?—From the first.

1833. Did you ever hear of the word before ?—I never saw nor D heard of it.

1834. When you first remember it there were other compressed goods upon the market, we have heard ?—I only remember one.

1835. What was that ?—Wyeth's compressed tablets of chlorate of potash. E

1836. According to your view, was there anything new in the introduction of compressed medicines in a convenient form when Burroughs & Wellcome brought it out ?—Yes, with the exception of these tablets I had never seen anything of the kind.

1837. Wyeth's had done the same thing ?—Yes. F

1838. Before ?—Yes.

1839. Have you known, since you first heard of tabloid, of its use in connection with the goods of any other firm than that of Burroughs, Wellcome & Co. ?—No.

1840. Do you know the tabloid and tabloids of Burroughes, Wellcome G & Co. to be widely advertised ?—I do.

1841. In the trade journals ?—Yes.

1842. What should you say with regard to the knowledge of the trade ? Could you say whether it was or was not common knowledge of the trade that tabloid refers to Burroughes & Wellcome's make ?—In my H coming in contact with brother chemists I have never met one yet who disputed the fact.

1843. And in the trade have you ever heard it used in any other connection ?—Never.

Cross-examined by Mr. WALTER.

1844. Is your business wholesale or retail?—A retail dispensing chemist.

1845. You get medical prescriptions?—I do.

A 1846. And you agree with the other chemists that the doctors commonly add "B. W." or "B. W. & Co"?—No, we get quite as many without "B. W. & Co." as we do with "B. W. & Co."

1847. You get as many without?—Yes.

1848. There are a very large number of medical men who do put

B "B. W. & Co.," or "B. & W." after?—Yes, there are.

1849. Have you received orders for drugs under the name "tabloid"?—Yes.

1850. Which are not listed or made by Messrs. Burroughs, Wellcome & Co.?—No.

C 1851. You have never received one?—No.

1852. Have you received a prescription in which the word "tabloid" has been put in respect of drugs not used by Burroughs & Wellcome?—No, I cannot say that I have.

1853. You have never had that?—Not that I am aware of.

D 1854. What do you understand to be the shape of a tabloid?—A small round compressed drug.

1855. It is something like a tablet?—Yes, it is something like.

1856. The public knows perfectly well what the shape of the thing is, do not they?—Oh yes, they do.

E 1857. What do they mean by tabloid—what shape do they mean by tabloid?—I do not know what they mean by that.

1858. You do not?—No.

1859. Do the public come in and ask for tabloids?—They do.

1860. Do they call them Burroughs and Wellcome's?—They do;

F sometimes Burroughes and Watts.

1861. You have never been faced with the difficulty of having to decide whether a tabloid which you knew was not Burroughs and Wellcome——?—I have not.

1862. You have never had the difficulty at all?—No.

G 1863. Do you actually come into contact with the public yourself, or is it your assistants?—I do. I come as much into contact as I can.

1864. You, yourself?—Yes.

1865. You have known all along that they claim it as a trade mark?—I do; yes.

H 1866. They informed you of that?—Yes.

Re-examined by Mr. NEVILLE.

1867. As far as your experience goes, does everybody else in the trade know that tabloid is the trade mark of Burroughs, Wellcome & Co.?—So far as I know.

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Mr. H. Wilson

Mr. HARRY WILSON, sworn.

Examined by Mr. LEVETT.

1868. I think you are a member of the firm of Randall & Son?—Yes.

1869. You carry on business at High Street, Southampton?—Yes. A

1870. How long have you been in the business?—For nine years.

1871. And before that?—About 25 years my knowledge of the trade.

1872. That is as a retail druggist?—Exactly.

1873. Do you remember tabloids being introduced?—Yes. B

1874. Do you remember how long ago it was?—18 years.

1875. At that time were there any other compressed goods on the market?—Yes.

1876. Can you tell me what they were?—Brockedon's compressed tablets of potash and soda. C

1877. Do you remember any others—Coopers'?—I do not remember that Coopers' were established then. I have known them since.

Mr. Justice BYRNE: I do not think I have heard any cross-examination about that, Mr. Levett. I do not think you need ask the witnesses whether they ever heard of any others than those. If Mr. Walter wants D to ask anything about it of course he can.

1878. Mr. LEVETT: I am obliged to your Lordship. In the first place, what does the word "tabloid" convey to your mind?—A compressed drug made by Burroughs, Wellcome & Co.

1879. As far as you know in the trade of chemists and druggists, E what does "tabloid" mean?—The same thing.

1880. Do you see the public yourself?—Occasionally.

1881. Can you tell me what the public mean by tabloids?—They mean the compressed drugs of Burroughs, Wellcome & Co.

1882. Do you get prescriptions?—Yes. F

1883. What form do these tabloid prescriptions generally take now?—Sometimes the letters "B. W. & Co." are mentioned, sometimes not.

1884. Except the goods of Burroughs, Wellcome & Co. have you ever known any goods sold as tabloids?—Never.

Cross-examined by Mr. WALTER. G

1885. Have you had prescriptions of tabloids in, referring to drugs not of the manufacture of Burroughs, Wellcome & Co.?—Will you repeat the question?

1886. I say have you had medical prescriptions?—We have.

1887. Referring to tabloids not of the manufacture of Burroughs and H Wellcome?—I do not quite grasp the question.

1888. Have you had a prescription from a medical man specifying tabloids which were not of the manufacture of Burroughs, Wellcome & Co.?—No. I

1889. Never had a case ?—Never.

1890. Never had a single case of a prescription with "tabloid" in it in which you had to refer to a doctor to find out what he meant ?—You are putting it a different way. Whenever the word "tabloid" has been A mentioned in a prescription, either with or without "Burroughs, Wellcome & Co.," it has always been understood to mean Burroughs, Wellcome & Co.

1891. But I want to know, have you ever had a case in which Burroughs, Wellcome & Co did not supply the goads ?—Oh. no.

B 1892. Do you yourself see the prescriptions ?—I see them frequently. I often see the prescription book if not the prescription itself.

1893. Do you get written orders to customers for tabloids ?—Frequently.

1894. And are any of those in respect of goods which Borroughs, C Wellcome & Co. do not keep ?—Not tabloids—tablets.

1895 No, I am asking for the word "tabloid" ?—We never get orders for tabloids except Burroughs, Wellcome & Co.'s

1896. Have you ever looked at your list ?—Burroughs, Wellcome & Co.

D 1897. No, your papers. Have you ever looked at your papers, if I am going to produce chemists who have had dozens and dozens of such things, and will produce the documents ?—Quite so.

1898. Have you ever looked through your papers for this purpose ?—Which papers do you refer to ?

E 1899. Written orders received for customers —Yes, I open the letters every morning.

1900. Do you suggest to my Lord that you have never received an order for tabloids in respect of goods which are other than Burroughs, Wellcome & Co.'s ?—No, I never have.

F 1901. Never received an order for tabloids when Burroughs, Wellcome & Co.'s were not meant ?—No.

1902. Do you come in contact with the public yourself in the shops ? —Occasionally.

1903. Only occasionally ?—Yes.

G 1904. Not much of recent years, I suppose ?—Rather more of recent years than formerly.

1905. Do the public come in and order tabloids ?—They come in and order tabloids.

1906. And have you ever been asked for tabloids of goods other than H Burroughs, Wellcome & Co.'s ?—Yes, on one occasion.

1907. You on one occasion remember that ?—Yes.

1908. What were you asked for ?—It was a special preparation of quinine.

1909. You were asked for tabloids of it ?—I was asked for tabloids.

I 1910. What did you do ?—We communicated with Burroughs, Wellcome & Co. We found the prescription had formerly been made up in Sloane Square, London, and we concluded that they had also communicated with Burroughs Wellcome & Co. We did also, and we got them. They were made specially, I believe.

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1911. They were made specially ?—I think they were.

1912. They were not in their ordinary list ?—Not in the list.

1913. What was the nature of the prescription there ?—It was a special preparation of quinine. I do not know at present.

1914. Then it was to be put up in tabloid form ?—It was in tabloid form.

1915. It was to be put up in tabloid form ?—It was in tabloid form. It was prescribed in tabloid form.

1916. The prescription was there, I suppose ?—Yes, for tabloids.

1917. How do you suggest the doctor knew what it was in if it was not listed by Burroughes, Wellcome & Co. ?—I concluded he required it made by that firm on account of the accurate doses, the special compression which was required.

1918. You of course know that it has been a registered trade mark ?—Yes.

1919. And has been claimed as such all through in their advertisements ?—That is so.

1920. Do you deal in homœpathic goods ?—Yes.

1921. Did you ever get asked for any special tabloids in those ?—No.

1922. Never ?—No.

Mr. S. R. Atkins.

Mr. SAMUEL RALPH ATKINS, sworn.

Examined by Mr. NEVILLE.

1923. You are a Justice of the Peace and a former Mayor of Salisbury ?—Yes.

1924. And a pharmaceutical chemist now retired from business ?—Yes.

1925. How long were you associated with the trade ?—About 50 years.

1926. Do you know the words "tabloid" and "tabloids" ?—Yes.

1927. What do you understand them to mean ?—The preparations of Burroughs, Wellcome & Co.

1928. When did you first hear of them ?—I should think about 16 or 18 years ago. I do not remember the date.

1929. As far as you know, was that when the goods first came upon the market ?—Yes.

1930. Before you heard the words in connection with Burroughs, Welcome & Co., had you ever heard the word "tabloid" at all ?—No.

1931. With your knowledge of the trade, what do you say is the meaning in the trade of the word "tabloid" or "tabloids" ?—The preparations of Burroughs, Wellcome & Co.

1932. Do you think that is common knowledge ?—Common knowledge.

1933. Have you come across in the course of your business any different use of the word on the part of the public ? The public I suppose do order tabloids occasionally ?—Yes.

1934. Have you anything to lead you to suppose that they attribute a different meaning to the meaning you attribute? Do you follow my question?—I think I understand it. I am not aware of any.

1935. When you get orders, or used to get orders for tabloids——?—You understand I have retired from business.

1936. Yes. That is why I altered the form of my question. When you used to get orders for tabloids you used to supply Burroughs, Wellcome and Co.'s?—Always.

1937. Did you believe the customer ordering tabloids meant the make of Burroughs, Wellcome and Co.?—I thought so.

1938. Do you remember any instance in your business of the word "tabloid" being used in a sense different to the production of Burroughs, Wellcome and Co.?—I do not remember any.

Cross-examined by Mr. WALTER.

1939. When did you retire from business?—About seven or eight years ago; I forget the exact date.

1940. Were you in the habit of receiving prescriptions in those days for tabloids?—Occasionally.

1941. Do you remember, or would you rather not charge your memory, whether the letters "B. W. & Co." or "B. & W." were used?—I do not remember.

1942. I suppose it is hardly fair to ask you either if you remember in any written orders you had whether "tabloid" was specified as B. W. & Co. or related to goods other than those?—I think I can say that the name of Burroughs, Wellcome & Co. was almost invariably associated with the order.

1943. Burroughs, Wellcome & Co. was almost invariably associated with the order?—With the order and the word "tabloid."

1944. They used the words "Burroughs & Wellcome" as well as the word "tabloid"?—Yes.

1945. Almost invariably?—Invariably.

1946. That was your recollection of it when you were in business?—Yes.

1947. They did not use the word "tabloid" alone, but it was associated with Burroughs & Wellcome?—Yes.

1948. I suppose that was so not only in the written but the verbal orders?—Yes.

1949. They asked for Burroughs, Wellcome & Co.'s?—I think I may admit there that the word "tabloid" alone in a verbal order would be used, and the invariable instruction to the assistant was to supply Burroughs, Wellcome & Co.'s.

1950. Your instructions to your assistants were to supply Burroughs, Wellcome & Co.'s?—Yes, invariably.

1951. You received in those days the same literature that we hear of now. Did you know that it was a trade mark?—I knew it was a distinctive mark; whether it was a trade mark or not I do not know.

1952. You do not remember?—I believed it to be their essential

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property by some process or other—a distinctive mark of theirs which carried its value.

Re-examined by Mr. NEVILLE.

What you have been telling us refers to the state of the trade about eight years ago ?—Yes. A

(Adjourned for a short time.)

Mr. J. H. Wilson.

Mr. JOHN HERBERT WILSON, sworn.

Examined by Mr. LEVETT.

1954. I think you are a Pharmaceutical Chemist and a Magistrate and past Mayor of Harrogate, Yorkshire ?—That is so. B

1955. Is your firm a wholesale firm solely ?—I am connected with two firms ; I am chairman of a retail firm and chairman of a wholesale firm.

1956. I think you have been in business for 30 years ?—That is so.

1957. Do you remember the word " tabloid " being introduced in the trade ?—I recollect many years back the word " tabloid " coming into use and being associated with the name of Burroughs, Wellcome & Co. I never heard the word before. C

1958. Just to finish that—ever since then have you heard anyone else's goods described as " tabloids " ?—I have never heard anybody else's goods so described, I have never seen any goods advertised and never received any list with the word " tabloid " associated with any other preparations but Burroughs and Wellcome's. D

1959. Can you tell my Lord what meaning it conveys to the chemist's trade ?—The word conveys to the trade, I believe, the compressed preparations of Burroughs, Wellcome & Co. E

1960. Have you, yourself in the retail part, been in communication with the public—I not mean the trade, but the public who come into shops ?—Just so.

1961. Can you tell my Lord what meaning does the word " tabloid " convey to the public, as far as you know ?—Exactly the same meaning as it has with the trade ; they want, I believe, Burroughs & Wellcome's preparations. F

1962. Do you ever see the prescriptions ?—Yes.

1963. What is the practice, as far as you know, about doctors putting on " B. W. & Co." below the " tabloid " ?—Very varied. In many cases they use the word " tabloid " only ; sometimes they add the additional " B. W.," the same as they might add the initials of any other firm to any of their preparations. G

1964. When you get a prescription with " Tabloid " alone, what do you supply ?—My conscience would not permit me to supply anything but Burroughs & Wellcome's preparations. H

Cross-examined by Mr. WALTER.

1965. Where is your business?—We are retail dispensing chemists, and I am also connected with a wholesale firm.

1966. Where?—At Harrogate—a fashionable watering place where we get prescriptions from all parts.

1967. I know Harrogate perfectly well?—I am glad you do.

1968. And I know your shop also. You receive prescriptions there?—A very large number.

1969. Not many tabloids, are there, up there?—Yes, considerable—a growing number.

1970. And you find, as I suppose—you have told us—a good many "B. & W."?—A certain number.

1971. Your shop faces the Stray?—Yes.

1972. And another is near the station?—Yes; I am glad I am so well known.

1973. What is the modern practice—"B. & W." or "B.W. & Co."?—We have, perhaps, 50 medical men in Harrogate, resident. I do not presume many of those who know the character of the chemists would put anything but "tabloid"; but possibly if they were writing a prescription which might travel abroad, or what not, they might extra safeguard it by putting "B. & W."

1974. Do you mean to say you do not get a good many prescriptions "B. & W."?—Yes; both.

1975. Have you ever been asked for drugs other than B. & W. under the name "tabloid"?—Yes.

1976. Drugs not sold by them?—Only once, yes.

1977. By some member of the public?—No, by a prescription of a medical man.

1978. They were tabloids. What do you say they were for, do you remember?—Hæmogoblin.

1979. That is a proprietary medicine, is it not?—No; it is a pure drug.

1980. But it is not sold as Burroughs & Wellcome's?—No, nor by any other firm that I know of, in a compressed form.

1981. What did you do?—Told the doctor that Burroughs & Wellcome had it not on their list, and arranged to have it compressed.

1982. You arranged to have it compressed?—Just so.

1983. Put into tabloid form?—By Burroughs & Wellcome.

1984. You got Burroughs & Wellcome to do so?—I presume so.

1985. Why do you presume? Did you send it up to Burroughs & Wellcome?—Yes, we should communicate with them.

1986. You get a lot of letters from the public, I suppose. "Send me so and so"; old customers of yours?—Yes.

1987. How many of those have you had referring to the use of "tabloid" for goods other than Burroughs & Wellcome's?—The most of those orders are for repetitions of prescriptions that they have had dispensed at Harrogate, so that the original prescription, if it was "tabloid," would be the same in the repetition.

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1988. Have you ever been asked for tabloids" ?—Over the counter do you mean ?

1989. Yes, or by letter ?—I do not know by letter, but I can answer over the counter, if that will do.

1990. Other than Burroughs & Wellcome's ?—No, certainly not—never to my knowledge. A

1991. Have you ever suggested : "Do you mean Burroughs & Wellcome's" ?—I beg your pardon.

1992. Do you ever say, "Do you mean Burroughs & Wellcome's" ?—I do not quite understand you. B

1993. When you are asked for "tabloids," do you say, "Do you mean Burroughs & Wellcome's" ?—No. As I told Counsel, if they asked for "tabloids," my conscience would not permit me to supply anything but Burroughs & Wellcome's preparations.

1994. Of course you have known it as a trade mark ?—I have known it as a name associated with their products. C

1995. You have known it as a trade mark ?—I understand it is their trade mark.

1996. You have known it from their literature ?—I have presumed it. It is in inverted commas. I think I know it. I think I may say yes. D

1997. You have never had cases of being verbally asked in Harrogate for drugs as "tabloids" which were not in Burroughs & Wellcome's list ?—No, I have never heard of a case in all my experience.

1998. Do you sell homœopathic medicines ?—In a decreasing quantity. E

1999. Are those asked for as "tabloids" ?—Never ; they are asked for as something No. 3 or something of that sort—some imaginary thing.

2000. Do you know anything about "tablets" ?—Yes.

2001. Do you sell "tablets" ?—I believe the mass of anything that we sell in a compressed form are Burroughs & Wellcome's tabloids ; but we do keep tablets. F

2002. Of various other manufacturers ?—Yes.

2003. Any of those ever asked for as tabloids ?—Never, that I know of.

2004. No recollection of their being asked for ?—No recollection at all. It seems to be quite understood by the medical profession that "tabloid" means Burroughs & Wellcome's preparation. G

2005. By the medical profession ?—Yes.

2006. Never a solitary case of being asked for any of these tablets as "tabloids" ?—Not to my knowledge. H

2007. You yourself personally ?—Until last year, when I retired from the business, I was entirely hard-working at it for 30 years.

2008. In the retail ?—Yes.

Sir ~~Dr.~~ Sir
P. Manson

Sir ~~Dr.~~ Sir PATRICK MANSON, sworn.

Examined by Mr. Nevile. I

2009. You are a Doctor of Medicine ?—Yes.

2010. And I believe you are medical adviser to the Colonial Office

and to the Crown Agents of the Colonies, and you are also Professor of the London School of Tropical Medicine ?—Yes.

2011. You have, I believe, the honour of having exposed the iniquities of the mosquito ?—I am partly responsible for that.

A 2012. Have you ever known the word " tabloid " used in connection with drugs ?—I have.

2013. For how long– for many years ?—Oh, yes, for many years.

2014. And what, to your mind, is the meaning of tabloid ?—It is a special form of drug prepared by Burroughs & Wellcome.

B 2015. Have you ever associated " tabloid " or " tabloids " with the goods of any other maker than Messrs. Burroughs, Wellcome & Co. ?—No, never.

2016. And have you ever known " tabloids " supplied by any other maker except Burroughs, Wellcome & Co. ?—I cannot answer that

C question. I do not know what they have supplied.

2017. Never mind, if you do not want to answer it. You do not know of any instance in which it has been done. It has not come under your personal observation—that is what I was asking you ?—No.

2018. Do you yourself prescribe Burroughs & Wellcome's prepara-

D tions sometimes ?—Oh yes, frequently.

2019. And under what name ?—" Tabloids."

2020. When you prescribe the " tabloid " or the " tabloids," what preparation do you expect the dispensing chemist to supply ?—Burroughs & Wellcome's.

E 2021. Did you ever hear of the word " tabloid " until you heard it usyd in connection with Messrs. Burroughs and Wellcome's goods ?—Not to my recollection.

Cross-examined by Mr. WALTER.

2022. In your prescriptions do you put " B. & W. " ?—Occasionally,

F to make quite sure that I get the article I wish for dispensed.

2023. Is that your general practice ?—No, my occasional practice.

2024 But why put " B. & W. " in some cases and not in others ?—Because I know that imitations occur in all things and all trade goods and so on, and I like in the case of a serious disease to make quite sure that

G my patient gets what I order.

2025. I do not quite understand. In an ordinary case you mean it does not very much matter ; is that it ?—Well, if you like to put it so.

2026. I want to know, doctor. What do you say ?——

2027. Mr. Justice BYRNE : I suppose what the doctor means is this.

H If you prescribed such a drug as bicarbonate of soda it would not matter very much who made it, but if you were prescribing a drug for a serious disease you would take the precaution of adding the extra initials ?—That, my Lord, is the precaution I take.

2028. Mr. WALTER : Yes. I suppose the initials of other makers

I are used too. For instance, if you want a particular drug you use the initials of the makers whose drug you want, or are they the only makers

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whose goods you specify ?—No. I have used the initials of other makers.

2029. " A. & H." ?—" A. & H."

2030. Yes, Allen & Hanbury ?—No, never.

2031. " P. D. & Co." ?—No.

2032. Or some of those others which we have heard of ?—No.

2033. You have not used those ? " Tabloid " conveys to your mind a definite meaning apart from Burroughs & Wellcome, does it not ?—I cannot say that it does. it is not an English word.

2034. It occurs in several English dictionaries, of course ?—I am not familiar with them.

2035. If anyone was to ask you what a " tabloid " was you would have no difficulty in knowing what he meant apart from the name of the manufacturer ?—I should put it down as one of Burroughs & Wellcome's manufacture.

2036. But apart from that ?—It would have no meaning to me.

2037. You say " tabloid " has no meaning to you ?—No, I might suspect perhaps.

2038 Let us have your suspicion ?—I should suspect that the man was propounding a conundrum.

2039. And that is all you would suspect ?—I do not think I should suspect much more.

2040. Are you a philologist ?—I am not.

2041. Then perhaps you do not know what the meaning of the term " oid " is ?—I do.

2042. What is it then ?—Something that is similar or dissimilar, or that may be put in without any special meaning.

2043. Yes, yes, but it does not suggest anything to your mind in the matter of " tabloid " ?—I cannot say that it does ; I am so familiar with the word now that it is associated in my mind with Burroughs & Wellcome's preparations.

2044. Do you expect that your patients are going to get a liquid ?—No, I do not—certainly not.

2045. Then so far we are agreed. It is not a liquid. Is it any particular form ?—" Any particular form ? "

2046. Yes ?—It is Burroughs & Wellcome's preparation.

2047. I agree ?—And that is the form presented to my mind when the word is used.

2048. And nothing else ?—No, nothing else absolutely.

2049. " Tabloid " has no association in your mind with shape ?—I can imagine an association, but I cannot recall it definitely.

2050. Do your patients ever talk about " tabloids " ?—" Do my patients ever talk about " tabloids " ?

2051. Yes ?—Yes.

2052. They have mentioned tabloids to you ?—Yes, they have mentioned them.

2053. They have mentioned that they wanted their medicine in " tabloid " shape ?—I have often asked them that—whether they wanted tabloids—not " tabloid shape."

2054. And they have said they wanted "tabloids"?—They have said they wanted tabloids.

2055. They have often said they wanted "tabloids"?—Yes, they have often said they wanted tabloids.

A 2056. They wanted them because they were a convenient form to carry?—I do not know for what reason particularly.

2057. They never suggested the reason?—No, they referred it. I did not know their reason—I am not responsible for their reasons.

2058. But they do say they want their medicine in "tabloid" form?

B —Yes.

2059. They want it in a convenient form for travelling?—Yes.

Re-examined by Mr. NEVILLE.

2060. You understood them to mean that they wanted Burroughs & Wellcome's preparations?—Yes.

C Dr. DAVID ELPHINSTONE SETON, sworn.

Examined by Mr. LEVETT.

2061. I think you are a Doctor of Medicine?—Yes.

2062. You live at No. 1, Emperor's Gate, South Kensington, W.?—Yes.

D 2063. I think you have been in the profession 46 years?—Longer than that. nearly 50 years.

2064. Do you remember Burroughs & Wellcome bringing out tabloids?—Yes, quite well.

2065. Can you tell me how many years ago that is?—About 1884 or

E 1885, I think.

2066. Before that time had you ever known the word tabloid?—No, never.

2067. Since that time have you ever known the word tabloid applied to anything which was not of Burroughs & Wellcome's manufacture?—

F Not one.

2068. In writing out prescriptions, do you sometimes prescribe tabloids?—I mention the word tabloid and the description of the drug I want.

2069. Some of the doctors tell us they put "B. W." or "B. W. &

G Co." underneath. Do you do that?—I only do that when I wish the specific preparation of Messrs Burroughs & Wellcome's to be had, and that nothing else should be foisted upon my patients except that.

2070. You want to make assurance doubly sure?—Quite so.

2071. When you prescribe "tabloids" for a patient what do you

H intend that patient to get?—Burroughs & Wellcome's preparation.

2072. Have you ever prescribed tabloids for preparations that Burroughs & Wellcome do not make?—None.

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Dr. D. E. Seton.

Cross-examined by Mr. WALTER.

2073. Is yours a consulting practice?—Partly a consulting practice. I may saw now it is altogether consulting.

2074. I understand that you put "B. & W." when you want the particular preparation?—When I want no other preparation than Messrs. Burroughs & Wellcome's then I put "B. & W." A

2075. Have you put "Tabloid B. & W."?—I put "tabloid" with the drug I wish given with "B. & W." underneath—that is not frequently.

2076. That is when you wanted to be certain?—Yes, that it should be nothing else. B

2077. In cases where you put "tabloid" why is that precaution taken, and not in the ordinary way?—Because there are a number of compressed drugs in the market. One or two I certainly know, and I do not want those drugs given to my patients.

2078. A tabloid, in your view, is rather a term that would apply to them all. Not at all. There are men who assume the name of tabloid for their own—but perhaps I had better not say that. C

2079. You know that?—I know one firm which does. I do not say they use the word tabloid, but they prepare drugs of that sort.

2080. Then a tabloid conveys to your mind a definite idea of form?—A most definite idea. D

2081. May I put it that the public rather likes tabloid form?—Well, sometimes. It depends altogether whether they are going some distance or not—then the tabloid form is very convenient.

2082. I daresay your patients occasionally say they would like their medicine put up in tabloids?—Sometimes, more especially in this troublesome age, when it is difficult to get them to take drugs in any other form. E

2083. The modern tendency is to want it all compressed?—Yes, the stupid tendency of the day is to have everything compressed in as small a form and with as little taste as possible. F

2084. It is a degenerate age——

Re-examined by Mr. NEVILLE.

2085. What is the definite idea which "tabloid" presents to your mind?—Only the preparation of Messrs. Burroughs & Wellcome.

Mr. J. A. Walsh.

Mr. JAMES ALOYSIUS WALSH, sworn. G

Examined by Mr. NEVILLE.

2086. Are you a licentiate of the Royal College of Physicians and the Royal College of Surgeons?—Of Edinburgh.

2087. And are you a pharmaceutical chemist?—I am.

2088. Do you trade under the firm name of J. & J. Graham?—J. J. Graham & Co. H

2089. At 30, Westmoreland Street, Dublin?—Yes.

2090. How long have you been in business at your present address? —At my present address I have been about 16 years in business.

2091. What is about the total extent of your knowledge of the trade? —It is a little over 20 years since I first went to the trade as an apprentice.

2092. Are you acquainted with tabloid products?—I am.

2093. What do you understand them to be?—I understand them to be the compressed drugs made up by Burroughs, Wellcome & Co.

2094. Have you always associated the name tabloid with Burroughs & Wellcome?—I have.

2095. Have you ever known it used in any other connection with reference to any other maker?—Not in the trade—I mean I have never known it used in any other way except by inadvertance.

2096. According to your experience and knowledge, is it common knowledge of the trade that tabloid is the name of Burroughs & Wellcome's goods?—It is.

2097. When tabloids are ordered what do you supply?—I supply the products of Messrs. Burroughs, Wellcome & Co.

2098. Invariably?—Provided that they put up as tabloids.

2099. Have you ever had in prescriptions a reference to tabloids in cases where the goods are not sold by Burroughs, Wellcome & Co.? —Yes.

2100. In that case what do you do?—We, if possible, communicate with the doctor, or, if not, with the patient.

2101. Should you ever, without communication either with the patient or the doctor, dispense other goods than Burroughs, Wellcome and Co.'s under an order or prescription for tabloids?—Unless it was very obvious frem the prescription that it was by an error that the doctor mentioned the word tabloid.

2102. Did you ever hear of the name before you heard it in use in connection with Burroughs & Wellcome's goods?—No.

Cross-examined by Mr. Walter.

2103. By inadvertence or otherwise doctors do use the term tabloid for goods other than those of Messrs. Burroughs, Wellcome & Co.?— When I mentioned inadvertence I was thinking rather of the public than of the doctors.

2104. We will take them in turn. First of all you told us that orders have been received by you which it was perfectly clear when you saw them were not for Burroughs, Wellcome & Co.'s goods which were ordered as tabloids?—Yes.

2105. You do receive written orders to that effect?—Occasionally.

2106. There where it is obvious that tabloids means the article—the shape of the article—you supply the article wanted?—That is not the way I reason. I look upon it as an error for the word tablet, or whatever preparation is put up in the other form.

2107. You look at it that tabloid is an error and used for tablet—

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they are very interchangeable terms, are not they ?—To a certain extent they are—I mean as far as the pronunciation goes.

2108. But do you think the public generally draws much distinction between tabloids and tablets ?—They do in my experience.

2109. They ask for tabloids ?—They do.

2110. More often than they ask for tablets ?—When they require Messrs. Burroughs & Wellcome's goods.

2111. Do you think they know in the least ?—They do.

2112. You think they do ?—I do.

2113. That they know tabloid means goods of a particular person ?—I do.

2114. Some of the public ?—I should say the majority of the public.

2115. The majority of the public you think know that ?—I think they do.

2116. Have you been asked verbally for tabloids which are not of Messrs. Burroughs & Wellcome's manufacture ?—I would explain to the customer (as I have in instances when that did occur) that tabloids were only put up by Messrs. Burroughs, Wellcome & Co. that the other things they required were tablets or whatever the other form may be—varalets.

2117. They probably said they did not care a bit, all they wanted was the goods ?—I cannot say the exact answer I received in any case.

2118. Were not they a little annoyed at your interfering and worrying them with the details of manufacture ?—No.

2119. Not at all ?—No.

2120. They did not mind in the least. About how many instances can you recall of cases where in your prescriptions you have had tabloids put up which were not the goods of Burroughs & Wellcome ?—I cannot recall more than one or two instances.

2121. Now about verbal orders ?—Really I have not made any particular note at the time.

2122. It would have been acceptable if you had ?—There have been some—I will not say several.

2123. Do the doctors in Dublin put on "B. & W." as they do over here ?—Occasionally we receive some prescriptions with the word "tabloids," and we frequently receive prescriptions with the word "tab" and "B. W. & Co." written afterwards.

2124. "Tab" written ?—As a contraction for tabloid.

2125. But "Tab" is the ordinary medical term for all things—tabellae, tablets, and everything ?—No, Sir, not tab; it is only a contraction.

2126. Only a contraction of "tabloid" ?—It is a contraction of either "tabloid," or "tabella," or "tabule," and several others.

2127. Oh, there is a tabule ?—But if it is put down in connection with "B.W. & Co." it means "tabloid."

2128. Nobody has ever denied that "B.W. & Co." means the goods of Burroughs, Wellcome & Co.

Re-examined by Mr. NEVILLE.

Mr. J. A Walsh.

2129. You can only recollect a few—I think you said "some"—instances of inadvertent error in an experience of some 18 years with these goods; is that so?—That is so.

A ~~Mr.~~ BENJAMIN HORATIO PAUL, sworn.

~~Mr.~~ B. H. Paul.

Examined by Mr. LEVETT.

2130. I think you are a Pharmaceutical Chemist, and you are the Editor of the "Pharmaceutical Journal"?—Yes.

2131. And you have been a consulting chemist for 40 years?—Yes.

B 2132. Do you remember tabloids being introduced?—I do.

2133. By whom were they introduced?—Burroughs & Wellcome.

2134. Before that time had you ever heard the word "tabloid"?—No.

2135. What impression did the word "tabloid" convey to your

C mind?—Compressed drugs manufactured by Burroughs, Wellcome & Co.

2136. Have you ever known the word applied to goods not made by them?—No.

2137. Can you tell me what the word means in the chemical trade?—As a trade meaning?

D 2138. Yes?—Compressed medicines made by that firm.

Cross-examined by Mr. WALTER.

2139. Do I understand you are now or were the editor of the "Pharmaceutical Journal"?—I was.

2140. Up to when?—Last year.

E 2141. Are you in any business yourself?—I am.

2142. As a pharmaceutical chemist?—No.

2143. Your only association with tabloids is as editor of the "Pharmaceutical Journal"?—No, I do not know that that is so.

2144. Is there anything else?—I am as much associated with tabloids

F as anybody else.

2145. I only want to know how you come here. Do you come here as a member of the wholesale trade, or as a member of the retail trade, or the editor of the paper?—I am neither a member of the wholesale trade, nor a member of the retail trade, nor am I now the editor of the "Pharma-

G ceutical Journal."

2146. But you were the editor of the "Pharmaceutical Journal"?—I was the editor of the "Pharmaceutical Journal."

2147. And as editor of the "Pharmaceutical Journal," did you become acquainted with the drugs?—Yes.

H 2148. Mr. Justice BYRNE: Were you ever a pharmaceutical chemist yourself?—I am.

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Mr. B. H. Paul.

2149. Mr. WALTER: Were you ever in practice?—Not as a pharmaceutical chemist.

2150. And you became acquainted with them, I suppose, by Burroughs, Wellcome & Co. advertising in the journal of the Pharmaceutical Society?—As a matter of general knowledge also.

2151. But, first of all, did they advertise in the pages of the "Pharmaceutical Journal"?—Yes.

2152. Did they there state that they were the owners of the trade mark "tabloid"?—I believe they have stated that frequently.

2153. And that is your whole connection with the trade, is not it?—What trade?

2154. Being the editor of the "Pharmaceutical Journal." You have never practised as a pharmaceutical chemist?—No.

2155. Either wholesale or retail?—Either wholesale or retail.

Re-examined by Mr. NEVILLE.

2156. But you have been editor of this journal for how many years?—32 years.

2157. And in that capacity do you become acquainted with the articles dealt with in trade?—Intimately acquainted.

2158. And have you practised as a consulting chemist?—Yes.

2159. For how long?—Over 40 years.

2160. Mr. Justice BYRNE: You are a qualified chemist?—I am.

2161. What sort of degree or qualification do you get for that?—My degree is Doctor of Philosophy at Giesen. I am also a registered pharmaceutical chemist as it happens.

2162. Mr. NEVILLE: And in the course of your life's experience have you acquired a wide knowledge of the drug trade?—I have.

Mr. L. Newbery

Mr. LIONEL NEWBERY, sworn.

Examined by Mr. NEVILLE.

2163. Are you a partner in the firm of Francis Newbery & Sons of 27 and 28, Charterhouse Square?—Yes.

2164. That I think is a very old firm?—Over 150 years.

2165. Throughout that time has the firm carried on the business of wholesale druggists' sundrymen?—No, not all that time—only for the last 20 years or so as druggists' sundrymen; but we have been selling proprietary articles for 150 years and more.

2166. Have you personally taken an active part in your firm's business for 48 years?—I have.

2167. At the present time is the firm what is called wholesale druggists' sundrymen?—Yes.

2168. That is supplying druggists with the articles they require to vend?—Yes.

2169. Do you know "tabloid"? Have you been familiar with "tabloid"?—Yes.

2170. For how long?—For as long as they have been started here.

2171. What meaning does "tabloid" convey to your mind?—If you A want me to tell you what it is——

2172. No. You say you have known "tabloid"?—Yes.

2173. With what have you connected "tabloid"?—A drug compressed into a particular shape.

2174. Have you associated it with the idea of any particular B manufacturer, or with manufacturers generally?—No. "Tabloid" has been known as Messrs. Burroughs, Wellcome & Co.'s article for many years, and they have endeavoured from time to time, when people have brought up opposition articles, to put a stop to it.

2175. Do you get orders for tabloids?—Yes.

C 2176. When you get such orders what do you supply?—Burroughs, Wellcome & Co.'s.

2177. Invariably?—Always.

2178. Do you think that the trade commonly knows that "tabloid" means the products of Burroughs, Wellcome & Co.?—I do think so.

D 2179. Will you tell me if that is your price list (Handed to Witness)?—It is.

(Put in and marked L.N. 1.)

2180. There you list not only Burroughs, Wellcome & Co.'s articles, I understand, but a very great variety of articles in use by druggists? E —Yes.

2181. Your firm have sold Brockedon's articles?—We have.

2182. Were they so sold before Burroughs, Wellcome, & Co. came into the market with their tabloids?—Yes.

2183. How long have you sold them?—I should think for 50 or 60 F years.

2184. Have you any specimen boxes of Brockedon's goods?—No.

2185. You will be able to recognise them if I show you one?—I daresay.

2186. While we are looking for that I will ask you what did G Brockedon call them when you sold them—do you remember?—What does the box call them. (Box handed to Witness)?—"Brockedon's pure bi-carbonate of soda."

2187. Is that a compressed medicine?—It is.

2188. Let me look at it. We have heard so much about them that I H should like to see what they are like. Have you there another box of Brockedon's goods in different form?—Yes.

2189. What are those?—"Compressed pure chlorate of potash."

2190. He does not call them any name?—No; only "Patent pills," at the top.

I 2191. They look to me like bi-convex discs. I do not know what you would call them. There they are to speak for themselves. Have there been quite recent alterations in the form, or is this the form you have known them by all those years?—This is not the same form as they

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Mr. L. Newbery.

originally were ; they were made by hand at first, and they were thicker, but latterly they have been made by machinery, and they have compressed them more closely, I presume.

2192. They were thicker originally, and now they take that thinner form ?—Yes.

2193. How long have they been sold in that thinner form ?—10 years I daresay in this form.

2194. Have you ever known goods sold under the name of "tabloids" other than Burroughs, Wellcome & Co.'s goods ?—I cannot remember any such case.

2195. No other firm dealing in tabloids except Burroughs, Wellcome & Co. ?—No, I am not aware of it.

Cross-examined by Mr. WALTER.

2196. Yours is a wholesale business ?—Yes.

2197. Entirely ?—Yes.

2198. Supplying to the trade ?—Yes, to the trade.

2199. That is your trade list which has been produced ?—Yes.

2200. Do you submit the pages of your catalogue to the various manufacturers before publication ?—To some.

2201. To Burroughs, Wellcome & Co. ?—Yes.

2202. I think Burroughs, Wellcome & Co. make a practice of requiring all the trade to submit their lists ?—I do not know that they do, but we have done so at their request and it is for our convenience as well as the convenience of the trade.

2203. Quite so. You do not come across doctors' prescriptions ?—No.

2204. And you do not come across the public ?—No.

Re-examined by Mr. NEVILLE.

2205. You distribute those price lists to whom ?—To the trade.

2206. Generally amongst the trade ?—The trade.

Mr. G. R. Barclay.

Mr. GEORGE ROBERT BARCLAY, sworn.

Examined by Mr. LEVETT.

2207. I think you are the managing director of the firm of Barclay & Sons, Limited ?—Yes.

2208. They are wholesale druggists' sundrymen ?—Yes.

2209. I think you have been in the trade 35 years ?—Yes.

2210. Do you remember tabloids being brought out ?—No, I cannot say I remember them coming out. They have been out a very long time, but I do not remember the exact time they came out.

2211. Who brought out tabloids ?—Burroughs, Wellcome & Co.

2212. Before they brought they out had you ever heard the word "tabloid" before ?—Never.

2213. Since that time have you ever heard the word "tabloid" applied to goods not made by Burroughs, Wellcome & Co. ?—Never.

2214. What is the meaning in the drug trade of "tabloid"?—It means a compressed drug put up by Burroughs, Wellcome & Co.

A 2215. Is that your catalogue or price list (handing same to Witness)? —Yes.

(Put in and marked G.R.B. 1.)

2216. If you had an order sent to you for tabloids, what goods would you supply?—We should supply goods made by Burroughs, Well-
B come & Co.

Cross-examined by Mr. WALTER.

2217. You are wholesale, I suppose ?—Yes.

2218. You have nothing to do with doctors or the public ?—No.

2219. What is the meaning of a "Burroughs & Wellcome tabloid"?
C —It means a compressed drug put up by Burroughs & Wellcome.

2220. It means a compressed drug only ?—Yes. I associate the name "tabloid" with a compressed drug made by them.

2221. Nothing else ?—No.

2222. It merely means a compressed drug ?—Yes, I take it to be so.

D 2223. It has nothing to do with shape or anything of the kind ? —No.

2224. Nothing at all ?—No.

2225. Does your trade list come under the supervision of Burroughs, Wellcome & Co. Do you send it, or the part relating to Burroughs,
E Wellcome & Co., to them to be revised before you publish it ?—Yes, we have done so to see that the prices are right.

2226. You receive your orders from the retail chemists ?—Yes.

2227. Is it not the fact that a large number of your orders come in for tabloids "B. & W." ?—They may do. I do not see orders myself that
F come in. Some may come in with B. & W., and some may use the word tabloids.

2228. Do the retailers in sending in to you ask for tabloids B. & W. ? —I say they may do. I do not see orders come in myself.

2229. Can you tell us whether it is so or not ?—I should say not.

G 2230. But you do not know ?—I should say from my experience, extending over a great many years, that whenever they want tabloids they simply say tabloids of so and so.

2231. Mr. Justice BYRNE: Such and such a material ?—Yes.

2232. Mr. WALTER: You would have no hesitation what to
H supply ?—No, certainly not. The word tabloids means in our trade Burroughs & Wellcome's goods and nobody else's.

Mr. ALFRED CHARLES WOOTTON, sworn.

Examined by Mr. NEVILLE.

I 2233. Are you a member of the Council of the Pharmaceutical Society of Great Britain ?—Yes.

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Mr. A. C. Wootton

2234. Have you been for 30 years editor of "The Chemist and Druggist"?—I was for 30 years.

2235. You were for 30 years, but you are so no longer?—No.

2236. When did you retire from that position?—In 1899.

2237. Were you in business yourself for 10 years as a pharmaceutical chemist?—I was engaged in business, yes.

2238. Engaged in business for 10 years, is that right?—Yes, about.

2239. Have you a wide knowledge of the drug market?—A fair general knowledge.

2240. Have you known the name of "tabloid"?—Yes.

2241. For about how long have you known it?—Since they were introduced by Messrs. Burroughs & Wellcome.

2242. Since they first came into the market?—Yes.

2243. What does "tabloid" mean in your view?—Compressed drugs made by Burroughs, Wellcome, & Co.

2244. Have you always associated the word with the make of Burroughs, Wellcome, & Co., or not?—Yes, always.

2245. Have you associated it exclusively with their make?—Exclusively.

2246. You have never known any other firm dealing in tabloids?—Never,

2247. I suppose the "Chemist and Druggist" is one of the advertising papers, is it not, I mean a paper in which the advertisements appear?—Yes.

2248. And you have for many years advertised Burroughs & Wellcome's and other goods?—Yes.

2249. Can you speak at all to the general knowledge in the trade of the meaning of "tabloid"?—Yes.

2250. In the trade generally what do you say is the meaning of tabloid?—So far as I know every chemist understands the word "tabloid" to be the special property of Messrs. Burroughs, Wellcome & Co.

Cross-examined by Mr. Walter.

2251. When were you in practice as a chemist?—Previous to 1868.

2252. So that from that point of view you know nothing about tabloid?—Not then, certainly not.

2253. So that all your knowledge is from "The Chemist and Druggist"?—Yes, generally.

2254. And your knowledge is largely derived from the advertisements of Burroughs, Wellcome & Co. in your pages?—Of course I knew what they advertised.

2255. You are not in the trade?—Yes, I am interested in the trade now.

2256. I know, but you have been the editor of a trade paper?—I have been.

2257. And you had no other business?—No.

Mr. JAMES CANTLIE, sworn. Nov. 23. 1903

Examined by Mr. LEVETT. Mr. J. Cantlie.

2258. I think you live at 46, Devonshire Street, Portland Place? —Yes.

A 2259. You are a Fellow of the Royal College of Surgeons?—Yes.

2260. And a lecturer at Charing Cross Hospital?—Yes.

2261. I think you have been in ~~the profession~~ the profession for about 30 years? —Yes.

2262. Do you remember the word "tabloids" being first introduced?

B —I cannot remember the exact date, but I remember the distinct period in which the word "tabloid" appeared. I was abroad at the time.

2263. By whom was the word introduced?—By Burroughs & Wellcome.

2264. Before that time had you ever heard the word "tabloid"?—

C Never.

2265. What meaning does the word "tabloid" convey to your mind? —A form of compressed drug prepared by Burroughs & Wellcome.

2266. Have you ever heard the word applied to anyone else's goods except Burroughs and Wellcomes?—No, never.

D 2267. When you prescribe for your patients do you use the word "tabloids"?—I use the word "tabloid" when I am meaning to have Burroughs & Wellcome's preparation. If it is in some part of the country out of the way I say "tabloid" or "tablet." The word "tablet" refers to somebody else's preparations, but the word "tabloid" I look upon as

E being Burroughs & Wellcome's own preparation. But in case the patient's supply of drugs should be delayed by want of not having that particular form of tabloid ordered, I put in the word "tablet," so that the patient may get the medicine early. If it is in London I always put the word "tabloid" alone, and put in the word "tablet on purpose, so that they

F can get the advantage of getting the medicine early, but by "tabloid" I simply mean Burroughs & Wellcome's preparation.

2268. Do you use the initials "B. & W."?—I do not consider that necessary at all when I use the word "tabloid."

2269. Do you sometimes put them in or not?—I cannot say I never

G did, but I do not remember it.

Cross-examined by Mr. WALTER.

2270. You use "tabloid" or "tablet" interchangeably, I understand? —No, I do not.

2271. But you put them both in the same prescription?—I may put

H the word "tabloid" or "tablet," which means Burroughs & Wellcome's preparation, or, to save the patient's time, somebody else's preparation.

2272. The word "tablet" is not the property of any particular person? —"Tablet" refers to any other form of compressed drug, except Burroughs & Wellcome's "tabloid."

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Mr. J. Cantlie.

2273. But does "tabloid" convey any specific information about it? —It does to me; I can rely then upon the quality of the drug.

2274. Tablet?—I could not rely upon it.

2275. The patient gets the chance of both?—He must take what the country chemist or some other chemist can give him in the most speedy way. A

2276. You know the term. It is used very largely and generally, is it not, to describe the shape of the article?—I do not think it is.

2277. You do not think "tabloid" is used generally?—Not for describing the shape of any article. B

2278. Well, a little pilule of compressed medicine?—I think it refers to a compressed drug of Burroughs & Wellcome.

2279. A little compressed drug—we have heard it described as a thing in the shape of a little acid drop?—I look upon it as being Burroughs & Wellcome's compressed drug. C

2280. That is all?—That is all.

2281. You have never heard it used generally at all?—Never.

2282. Have not your patients ever said to you that they wanted it in tabloid form?—I should understand them to mean Burroughs & Wellcome's preparations. D

2283. Have they asked you to let them have their medicine in tabloid form?—Then I would give it them in Burroughs & Wellcome's preparation.

2284. You would understand them by asking for some medicine in tabloid form to mean Burroughs & Wellcome's?—I should. E

2285. You think the public would use it in that sense?—I do not know about the public, but I believe they do—I do, at any rate.

2286. You do not know anything about it in literature, I suppose. Have you met "tabloid" in literature?—In medical literature?

2287. No, in general literature. You take in "Punch," I expect? F —Yes.

2288. "Tabloid" is pretty frequently used in all sorts of things—"Tabloid drama," "Knowledge in tabloid form," and things of that kind. What do you understand by it?—I do not understand Burroughs & Wellcome's preparations G

Re-examined by Mr. Neville.

2289. Burroughs & Wellcome's drugs are mainly compressed, are they not?—Yes.

2290. My friend asked you whether you used "tabloid" and "tablet" as convertible terms?—No, not at all. H

2291. I understand you use them as alternative terms?—Yes.

2292. If you cannot get one you get the other?—If you cannot get Burroughs & Wellcome's, get something the next best.

2293. I understand that that is the course you adopt where you are sending prescriptions to places where there may be a difficulty in getting the drugs that you want?—I do. I

Mr. WILLIAM PHILLIP WANT, sworn.

Examined by Mr. NEVILLE.

2294. Is your address 44, Bishopsgate Street Without, London ?—That is so.

A 2295. Are you a pharmaceutical chemist ?—Yes.

2296. How long have you been associated with the business ?—Since the beginning of 1881.

2297. In 1881 what part did you take in it—were you actually trading ?—I was an apprentice at that time.

B 2298. You are now, I think, the editor of the "British and Colonial Druggist" ?—Yes.

2299. I think you were sub-editor before that ?—For 10 years.

2300. So that for 10 years past you have been editor or sub-editor of that journal ?—12 years.

C 2301. During that time have you been in business as well ?—No, that has been my sole occupation.

2302. Before that time were you in business ?—I was an assistant for the time before that.

2303. In the trade ?—Yes.

D 2304. In the course of your duties of editor and sub-editor have you acquired a wide knowledge of the proprietary articles sold in the trade ?—A pretty general knowledge, certainly.

2305. When did you first come across the word "tabloid" ?—I do not recollect it before, I think about 1887.

E 2306. What do you understand "tabloid" to be ?—The manufactures of Burroughs, Wellcome & Co.

2307. Have you always associated it with the make of that firm ?—Always, certainly.

2308. So far as you are acquainted with the trade, is that common F knowledge in the trade ?—That is, certainly.

2309. In all your experience have you ever come across the sale of any tabloids by any firm except Burroughs, Wellcome & Co. ?—I have never known any.

Cross-examined by Mr. WALTER.

G 2310. You have been, I suppose, absorbed in the duties of editor and sub-editor for the last 12 years ?—Yes.

2311. I suppose you have not had much opportunity in that period of coming across business transactions by chemists ?—I have mixed pretty generally with the trade in those 12 years.

H 2312. You do not go and discuss tabloids at lunch, do you ?—No, certainly not.

2313. Or anywhere else ?—Yes.

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Mr. W. P. Want.

2314. Your knowledge is practically confined to what you have learnt in the newspaper, is it not?—No.

2315. They are very good advertisers?—They are advertisers, certainly.

2316. Very excellent advertisers; and they advertise in your paper? A —They do.

2317. You have seen them frequently?—Seen what?

2318. Seen their advertisements?—Yes, I have.

2319. That is about all you know about it?—No, it is not—certainly not. B

2320. What practical knowledge have you got; do you take them?—Yes, I have taken them.

2321. Which is the easiest to take—a tabloid or a pill?—I do not know.

2322. When I asked that, what did I mean by a "tabloid"? You C seemed to understand—directly, at once. What do I mean by a "tabloid"?—I should mean something prepared by Burroughs, Wellcome & Co.

2323. That was the sentence asked you—which is the easiest to swallow, a tabloid or a pill?—I mean a small compressed drug prepared D by Burroughs, Wellcome & Co.

2324. It is not only, as you have told us, the manufacture of Burroughs and Wellcome?—I should not be surprised to see them issuing things under the tabloid name that were not compressed drugs; but as far as I know they have always been compressed drugs. E

2325. They have always been associated in your mind with compressed drugs?—All their preparations—Burroughs & Wellcome's preparations.

2326. Of a particular shape?—No, there are several shapes.

2327. All approximately the same?—What do you mean by F "approximately"?

2328. How often do you come across them?—Do I?

2329. Yes. Do you see one a year?—Yes

2330. Where do you see them—do you stock them?—No. I see them often enough. G

2331. What do you do with them?—I have seen them long before I went on to the paper; I have seen thousands of them.

2332. That is 12 years ago?—Yes.

2333. Where had you the privilege of seeing these?—At Lee, at Beckenham, and other places where I was in business. H

2334. Those were tabloids?—They were Burroughs & Wellcome's goods.

2335. But were they all tabloids, or not?—I do not quite follow.

2336. Were the goods that you sold only tabloids?—We used to keep other forms of compressed goods, but not under the name of I "tabloids."

Mr. SYDNEY FREDERICK HARVEY, sworn.

Examined by Mr. LEVETT.

2337. I think you live at 117A Queen's Gate ?—Yes.

2338. You are a member of the Royal College of Surgeons ?—Yes.

A 2339. You have been in practice 25 years ?—22½.

2340. You remember the tabloids coming out about the year 1884 or 1885 ?—About that time.

2341. Who brought them out ?—Burroughs & Wellcome.

2342. Before that time had you ever heard the word "tabloid" B used ?—Always in association with Burroughs & Wellcome's drugs.

2343. My question was: before that time had you ever heard it ?—Never before that time—not "tabloid."

2344. When you prescribe to your patients do you use the word "tabloid" ?—Always.

C 2345. What do you expect the patient to get ?—Burroughs & Wellcome's drugs.

2346. You have sometimes used the words "B. W." or "B. & W." ?—To emphasise the prescription and prevent substitution.

2347. Have you ever known any goods, except those made by D Burroughs & Wellcome, sold as tabloids ?—No. I have heard them used as compressed effervescent lozenges, bi-concave discs, &c. "Tabloids" always means Burroughs & Wellcome to one's mind in the profession.

2348. As far as you know, the medical profession and your brother doctors, what does "tabloid" mean with them ?—"Tabloid" with them E means Burroughs & Wellcome's preparation.

2349. Can you speak as to the chemists ?—I think all chemists understand "tabloid" to mean Burroughs & Wellcome's productions.

Cross-examined by Mr. WALTER.

2350. In fact you do use "B. & W." on your prescriptions ?—To F emphasise it—not always, but sometimes.

2351. To emphasise the prescription ?—Yes, because I had had other drugs substituted for Burroughs & Wellcome's preparations.

2352. You say "substituted"—you have had a tabloid supplied, I suppose ?—I have written a prescription "Three syrups tabloid Burroughs G & Wellcome," and I have had oxide of iron and ferrous phosphate dispensed—a totally different drug, although it was tabloid emphasised by B. W. & Co.

2353. That was a mistake ?—I do not think so. It occurred two or three times.

H 2354. I think you said you had had a different drug altogether prescribed ?—Absolutely.

2355. Whether you had put "tabloid" or "tablet" it would make no difference to that ?—"Tabloid" has always been understood to mean by chemists and doctors Burroughs & Wellcome's drugs. Sometimes one

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Mr. S. F. Harvey.

puts "B. W. & Co." as a safeguard on the prescription. I have a copy here of one.

2356. We have all seen "B. & W." frequently on prescriptions. You have got "B. & W." on it?—It is on this one.

2357. Are you told by persons who are travelling, and so on, that they would like the medicine in tabloid form?—They like Burroughs & Wellcome's preparations in cases and bottles when they are travelling.

2358. That was not quite the question I asked. Have you ever had persons who said they liked their medicine in tabloid form?—Yes, tabloid form.

2359. They said they would like it in tabloid form?—Yes, they nearly always ask us for it.

2360. What shape do you suppose they intend?—I do not think they want any shape, whether circular or flat or anything else.

2361. They want a compressed drug?—They want tabloids.

2362. You really suggest that when a person says he would like it in tabloid form he intends and means the goods of Burroughs, Wellcome and Co.?—I have asked them and said, "What sort of drugs do you want, because there are tabloids and tablets," and they have said, "Burroughs & Wellcome."

2363. When was this?—In the last 10 or 15 years, several times—two or three times a week sometimes.

2364. They want Burroughs & Wellcome's?—Yes.

2365. Why did you say there were tablets?—Because there are tablets advertised.

2366. Why when they ask you for medicine in tabloid form did you suggest tablets?—I did not suggest tablets. I asked whether they wanted tabloids or tablets; I did not suggest it.

2367. According to you tabloid was perfectly understandable. You had not a doubt in your mind?—Not at all.

2368. Why did you introduce tablets?—Because I wanted to know what tabloids they wanted—whether they wanted Burroughs & Wellcome tabloids or Cooper's.

2369. Or somebody else's tabloids?—Yes, because with Burroughs & Wellcome's they are accurate.

Re-examined by Mr. Neville.

2370. Did you understand when they said tabloid that they might mean the make of any manufacturer?—No, when they mentioned the word "tabloids" to me I always associated Burroughs & Wellcome's production with them.

2371. That is what you said before. I thought you meant that, but that is not what you said to my learned friend just now?—That is what it always conveys in my mind.

2372. Do they often put it to you in those particular words, "I want them in tabloid form"?—Yes.

2373. In that case do you understand them to mean any particular make?—Burroughs & Wellcome's. When they say, "I want them in

tabloid form" I always understand they want Burroughs & Wellcome's tabloids in bottles.

2374. They want Burroughs & Wellcome's tabloids ?—In bottles.

Mr. ALBERT WYNNE WARING, sworn.

Examined by Mr. NEVILLE.

2375. Are you a chemist and druggist ?—Yes.

2376. And you carry on business at 3, Bucklersbury, London ?—Yes.

2377. Have you been in the trade for 34 years ?—About 32, I think it is.

2378. Have you been at your present address for eight years ?—Yes, almost nine, I think.

2379. Is yours a retail business ?—Yes.

2380. Wholesale also, or only retail ?—No, dispensing chiefly.

2381. Do you remember the "tabloid" coming on the market ?—I do.

2382. Have you associated "tabloid" with the make of any particular firm ?—Yes.

2383. What firm ?—Burroughs & Wellcome.

2384. Was that true when you first heard of them ?—Yes.

2385. And has it been true ever since ?—Yes.

2386. And is it true to-day ?—Yes.

2387. Speaking of your knowledge of the trade, is that the meaning of the word "tabloid" in the trade ?—Certainly it is.

2388. Should you say from your experience that they are universally known as Burroughs & Wellcome's make ?—Certainly.

2389. If you get an order or prescription for "tabloids" to make up, what goods do you supply ?—Burroughs & Wellcome's.

2390. Invariably ?—Always.

2391. Do you find any difficulty arising from the prescription of "tabloids"—None whatever.

2392. So far as your experience goes, does the public know the meaning of "tabloid" and associate it with Burroughs & Wellcome ?—The majority do, I believe.

2393. You believe the majority do ?—I believe the majority do.

2394. Have you many cases in which they ask for "tabloids" when they mean some other maker's ?—No.

2395. Have you ever heard "tabloid" used in connection with another maker's goods besides Burroughs & Wellcome's in the trade ?—Never.

Cross-examined by Mr. WALTER.

2396. I gather that you have a good deal of prescription work ?—Yes, dispensing physicians' prescriptions.

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Mr. A. W. Waring

2397. "B. & W." is a not infrequent addition to the "tabloid"?—No, occasionally we see it.

2398. You do not think that "tabloid" has anything in the mind of the public to do with shape at all?—A "tabloid," no—nothing to do with shape.

2399. Not in the mind of the public at all?—It is a compressed drug made by Burroughs & Wellcome.

2400. In the mind of the public they are always associated with Burroughs & Wellcome?—I cannot speak on behalf of the public, I can only speak of my own experience. The public come in and ask for a "tabloid," and are supplied with Burroughs & Wellcome's.

2401. That is about all you can say?—What more do you want me to say.

2402. Have you ever been asked for "tabloids" that Burroughs & Wellcome do not sell?—No.

2403. You never have?—No.

2404. Do you sell homœopathic medicines?—No.

2405. You have never, in the whole course of your experience, had a case in which you have had any question in your mind as to what "tabloid" meant?—None whatever.

2406. Never had it?—No.

2407. Never had any difficulty in supplying any order that has been given to you from the list of Burroughs, Wellcome & Co.?—Never had any difficulty whatever. I stock a large quantity of them, and they are handy for me should I be out of a particular thing.

2408. But you have never had a case when it has happened?—They have said they would have it to-morrow or something of that sort.

2409. Never had a case in which it was not in their list?—No, I do not remember any.

2410. Have you had the curiosity to look through any of your orders before you came?—No, no orders whatever.

2411. Never looked through anything at all?—Not a word.

2412. So all that you can tell us is from recollection?—Yes, without a doubt, as a first class pharmacy, and I was manager for Corbyn's for 15 years, and we have always used the tabloids of Burroughs, Wellcome & Co., and we have never deviated from it, and nobody ever suggested such a thing.

2413. Nobody was suggesting that your very excellent establishment is not conducted on proper lines?—I thought there was such a suggestion.

2414. Has it anything to do with shape, in your mind?—No, nothing to do with shape.

2415. "Tabloid" conveys no meaning to your mind, I suppose?—Yes, it does—a compressed drug made by Burroughs, Wellcome & Co.

2416. That is all?—That is all.

2417. You know nothing about it generally. You do not understand the word except as connected with Burroughs, Wellcome & Co.?—As a trade mark of Burroughs, Wellcome & Co.

2418. You know nothing else about it?—Nothing else about it.

Mr. FRANCIS ALFRED ROGERS, sworn.

Examined by Mr. LEVETT.

2419. I think you are a Chemist and Druggist, practising at 327, Oxford Street?—Yes.

A 2420. And you have carried on business there for 17 years?—Yes.

2421. And altogether you have been in the trade 25 years?—Yes.

2422. Do you remember "Tabloids" coming out about the year 1884 or 1885?—No, I do not remember that. I remember them about 1887.

B 2423. Before that time had you ever heard of the word "tabloid"?—No.

2424. How were tabloids regarded when you first heard of them?—As the preparations of Burroughs, Wellcome & Co.

2425. What does the word "tabloid" convey to your mind?—A com-

C pressed tablet made by Burroughs, Wellcome & Co

2426. Have you ever known the word "tabloid" used in reference to any drug prepared by somebody else?—No.

2427. Do you make up prescriptions?—Yes.

2428. Do you find that doctors prescribe tabloids?—Yes.

D 2429. When you get a prescription for a tabloid what do you supply?—A compressed drug made by Burroughs, Wellcome & Co.

2430. Do you find some doctors put on the letters "B. W." or "B. W. & Co."?—Yes.

2431. What do you supply then?—The same thing, made by

E Burroughs, Wellcome & Co.

2432. As far as you know in the chemist and druggists' trade, what does "tabloid" mean?—A compressed preparation made by Burroughs, Wellcome & Co.

2433. Do you actually see the public in the shop?—Yes.

F 2434. Do they ever come for a tabloid?—Yes.

2435. What do the public want when they come for a tabloid?—I believe they want a preparation made by Burroughs, Wellcome, & Co.

2436. What do they get in your shop?—Certainly that.

Cross-examined by Mr. WALTER.

G 2437. Is your experience the same also, Mr. Rogers, that "B. W." or "B. W. & Co." is commonly added to prescriptions?—Yes.

2438. That is your experience?—Yes.

2439. Have you ever had the misfortune to be asked for an article not on Messrs. Burroughs, Wellcome, & Co.'s list by the name of a

H "tabloid"?—Yes.

2440. Frequently?—No, occasionally.

2441. And has it ever happened that you had no doubt in your own mind as to what the article was that was meant?—No, I do not quite understand that question.

I 2442. Have you had cases in which "tabloid" has been used for goods not in Messrs. Burroughs, Wellcome & Co.'s list, as to which at

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the same time you knew perfectly well what the customer wanted ?—Yes.

2443. There have been such cases ?—Yes.

2444. Have those occurred in medical prescriptions ?—Yes.

2445. Have they occured also in cases where they have been asked for ?—I should think so.

2446. Supposing it is a thing that is immediately wanted, it puts the chemist in a very awkward position, does not it ?—It might do.

2447. And might put the patient in a still worse position ?—I cannot say.

2448. What do you do personally under the circumstances ?—I should at once telephone and ask if the thing was on their list.

2449. And if it is not ?—Then I should see the doctor.

2450. You would see the doctor and then what next ?—I could do nothing more.

2451. Supposing you know perfectly well what the article is that is intended the whole time, what then ?—If I could get it I should get it.

2452. But you told me you know what the article is all the while ?—If I had it in stock I should supply it at once.

2453. If you know that "tabloid" is put down, and it is not Burroughs, Wellcome & Co.'s, and you know what it is, you would supply it ?—No.

2454. What would you do ?—I have said that I should telephone to know if Burroughs, Wellcome & Co. made such a thing.

2455. They would tell you at once they do not ?—Then I should see the doctor.

2456. I am assuming that you know all the while what is wanted and you have got it in your shop ?—Oh, I have not.

2457. You have not, because it is labelled "tabloid" ?—I should not have a thing which Burroughs, Wellcome & Co. did not stock, and have a prescription for tabloid and know what to supply.

2458. Although you know the whole time what the article is, when it has got the magic word "tabloid" in you cannot supply it ?—No, I cannot.

2459. You know what it is and you cannot supply it because it has got "tabloid" on it ?—I should not.

Re-examined by Mr. Neville.

2460. It is a magic word which you know only as used in connection with Burroughs, Wellcome & Co.'s goods ?—Yes.

2461. And consequently you never supply, in answer to a request for tabloids, any make but their make ?—That is so.

2462. You have told my friend you have had instances in which "tabloid" has been used in reference to goods which Burroughs, Wellcome & Co. do not make up. What proportion to the orders for tabloids should you think those bear ? I mean are they frequent, or are they very exceptional ?—Most unusual.

2463. How many cases can you recollect now of such an incident ?—I do not think I could recollect more than two or three the whole time.

Sir ANDERSON CRITCHETT, sworn.

Examined by Mr. NEVILLE.

2464. You are a Fellow of the Royal College of Surgeons and you are the senior ophthalmic surgeon at St. Mary's Hospital?—I am a Fellow of the Royal College of Surgeons of Edinburgh, and I am consulting surgeon at St. Mary's Hospital.

2465. I think you are also surgeon-oculist to the King and ex-President of the Ophthalmological Society, and were Honorary President of the International Ophthalmic Congresses of 1894 and 1899?—Yes.

2466. Have you been long acquainted with the word "tabloid"?—For many years.

2467. And have you attributed that name to any particular matter?—Certainly, to Messrs. Burroughs, Wellcome & Co.

2468. And have you ever known it employed in any other connection except as indicating the goods of Burroughs, Wellcome & Co.?—No.

2469. What is the form in which you use their drugs?—I may at once say that I know there are different forms of tabloids. I have used the medical tabloids which differ in form from the ophthalmic tabloids.

2470. I want you to show us what the form of the ophthalmic tabloids are that you use. They will show them to you in a moment? (Bottle handed to Witness.)—Yes. This is a bottle full of the ophthalmic tabloids.

2471. Does each pellet contain a very infinitesimal quantity of drug?—Certainly.

2472. Are they very small—I cannot see from here?—Very small indeed.

2473. I will take it from you. My Lord will see them no doubt presently. You have used both the medical and the ophthalmic tabloids?—I have.

2474. Do you prescribe for tabloids in your prescriptions?—Very often, especially for people going abroad.

2475. Mainly now-a-days the ophthalmic tabloids?—Yes.

2476. These ophthalmic drops are dissolved, are they not, before being used?—Not always. There are tabloids which dissolve in the eye itself. It is merely necessary to place the tabloid within the lower lid and the watery solution of the eye dissolves it.

2477. In other cases are they dissolved before they are used?—Sometimes.

2478. Do you ever put "tabloid" alone without indicating the name of the firm?—Certainly.

2479. In that case what goods do you intend the dispensers to supply?—Those of Messrs. Burroughs, Wellcome & Co.

2480. Sometimes I believe you use "B. W. & Co." in addition?—I have used it—more in early days than latterly.

2481. Latterly you use the name that you know—without further reference?—As a rule.

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Sir A. Critchett

2482. As far as you know is there anything novel about the shape of those drugs of Messrs. Burroughs, Wellcome & Co. ?—No.

2483. Were you familiar before, and outside their drugs, with compressed drugs of a similar shape ?—Certainly.

2484. Have they been known under a variety of different names ?—Yes, many.

Cross-examined by Mr. WALTER.

2485. You knew, I daresay, compressed drugs called tablets ?—Certainly.

2486. And have known them for many years ?—Yes.

2487. Does "tabloid" convey any idea of shape to you ?—No.

2488. None at all ?—None whatever.

2489. You have never considered the meaning of the word, I suppose ?—I have considered the meaning of the word, and have endeavoured to find out what it did mean.

2490. What was the result of your study in the matter ?—I was really unable to arrive at any definite conclusion, and I thought that it must be a word, like the tabloid itself, which had been manufactured for a special purpose.

2491. But "oid" is a very well known termination, particularly in the medical profession ?—Certainly.

2492. And it has a very general definite meaning ?—I should say it has various meanings.

2493. It is always "of the shape of" or "of the nature of" ?—Yes.

2494. It never has any wider meaning than that ?—From the Greek word "φidos," probably.

2495. Still, it never occurred to you that it had any meaning ?—No.

2496. Are you a student of modern literature ?—I am afraid I may lay myself open if I say yes.

2497. Do you know the word has become almost a word of the English language now—"tabloid" ?—Inasmuch as these makers are such very well known people you may take it that it has.

2498. I mean it has become disassociated altogether from the drugs of Messrs. Burroughs, Wellcome & Co.—the word "tabloid" ?—I have never met with it in any other association.

2499. Not "knowledge in tabloid form," and various illustrations of that kind—"tabloid drama"—"opera in tabloid" ?—No, you have the advantage of me there.

2500. You have not known those. I suppose you did not even know it had become a dictionary word ?—I did not.

2501. Well, one lives and learns ?

Mr. Justice BYRNE: Some of the things you have read out I do not think I have heard of before—some of the newspapers you read out of and your books.

Mr. WALTER: I think there were some.

Mr. Justice BYRNE: "Punch" is familiar enough. That is regarded as a classic.

2502. Mr. WALTER: Yes, my Lord, that is a classic. (To the Witness): I take it you have not noticed it in "Punch"?—I have not.

2503. "Punch" has been rather fond of "tabloid" lately. Surely "tabloid" suggests to your mind tablet?—A mural one?

A 2504. No; the same kind of thing—tabloid and medical tablet; the tablet into which compressed drugs were put up. Surely the connection between that and "tabloid" is not far to seek?—I have been more accustomed to "pellet" and "lozenge," and words of that sort.

2505. Do your patients inquire at all whether they can have their B medicine in tabloid form?—They do, especially when they are going abroad.

2506. They do want to know if they can have it in tabloid form?—Yes, they do.

Re-examined by Mr. NEVILLE.

C 2507. When they want it in tabloid form whose maker's goods do they get?—Burroughs, Wellcome & Co.'s.

2508. My friend has asked you about your knowledge of the termination "oid." Can you tell me whether there is in pharmacy a word "tabl"?—I have heard of the word "tabellæ."

D 2509. But "tabl" without any termination?—I do not know it.

2510. You do not know it as a term in pharmacy?—No.

2511. So that a termination put on to "tabl" would not have any meaning in pharmacy. You see what I mean. You told us "oid" is a Greek term, but suppose "oid" is put on to "tabl"——

E Mr. Justice BYRNE: Suppose you put it on to "tabel."

Mr. NEVILLE: If it were "tabelloid" it would be different.

Mr. WALTER: There are "fungus" and "fungoid."

Mr. RICHARD WOODGATE, sworn.

Examined by Mr. LEVETT.

F 2512. I think you are General Manager of the firm of William Edwards & Sons, wholesale druggists' sundriesmen, of 157, Queen Victoria Street?—I am.

2513. You have been with them 44 years?—Yes.

2514. I think for the last ten years you have been general manager, G and before that time you travelled for 20 years?—Yes.

2515. Do you remember tabloids being brought out about the year 1884 or 1885?—I do.

2516. Who brought them out?—Messrs. Burroughs, Wellcome & Co.

H 2517. Before that time had you ever heard the word "tabloid"?—No.

2518. Since that time have you ever known any goods not made by Burroughs, Wellcome & Co. sold as tabloids?—No.

2519. I think you are wholesale dealers, are you not?—Yes, quite.

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Mr. R. Woodgate

2520. In the chemist and druggist trade what meaning has the word "tabloid"?—The trade mark of Messrs. Burroughs, Wellcome & Co.

2521. Have you got a price list?—I have. (Same produced.)

2522. We will put that in. You quote tabloids there, do you not?—Yes, I do. A

(Exhibit put in and marked R W. 1.)

Cross-examined by Mr. WALTER.

2523. You are in the wholesale, solely?—Yes.

2524. You have nothing to do with the public and nothing to do with the doctors?—Occasionally we get an order from a doctor. B

2525. Not prescriptions, I mean?—No.

2526. Does the trade in ordering tabloids from you put "tabloids B. & W."?—Always.

Re-examined by Mr. NEVILLE.

2527. You have not the orders with you, I suppose. Do you say they always put "B. & W." after ordering "tabloid"?—Invariably. I should say in 99 out of every hundred orders received we have the customer put "B. & W." or "Burroughs, Wellcome" in full "tabloids." C

2528. I see—both the name and mark?—And the mark.

2529. You know it to be Burroughs & Wellcome's mark, I suppose? —Yes, quite. D

2530. And that is well known in the trade?—Entirely.

Mr. C. B. Allen

Mr. CHARLES BOWEN ALLEN, sworn.

Examined by Mr. NEVILLE.

2531. Are you a Pharmaceutical Chemist at 20, High Road, Kilburn? —Yes. E

2532. How long have you been in the trade?—I have been about 27 years in my present place.

2533. Do you know "tabloids"?—Yes.

2534. If you get an order for "tabloids," what do you supply?— Compressed goods of Messrs. Burroughs & Wellcome's manufacture. F

2535. Do you know the use of the word tabloid in connection with any other make than Burroughs & Wellcome's?—None whatever.

2536. With regard to the trade at large, do you say it is common knowledge in the trade that Burroughs & Wellcome's mark is "tabloid"? —Yes, undoubtedly. G

2537. Would you ever supply anything but Burroughs & Wellcome's make under an order for "tabloid" or "tabloids"?—In some cases it is necessary to do so.

2538. In some cases you say it is necessary to do so?—Yes, it is. H

2539. Will you tell me when?—In the case of a medical man who orders a tabloid and associates that trade name with another patented

article—with an article which is obviously a patent belonging to somebody else.

2540. In that case do you refer to the doctor?—No.

2541. You read the meaning yourself?—Yes.

A 2542. How many cases? Can you remember any cases of that sort?—Very few.

2543. Occasionally?—Not many—always connected with prescriptions. That does not refer to the retail sale—not retail custom over the counter. That is entirely dealing with the doctor's prescriptions, in which B the pharmacist has some share.

2544. Such cases you have known to happen occasionally during your experience?—Yes.

2545. As I understand, you do not recollect more than two or three times?—A few cases.

C 2546. Mr. Justice BYRNE: Could you give us an illustration of one?—Yes, a doctor may order "tabloids taka diastase." It is obvious what the doctor intends. He wants his patient to have "taka diastase." Now "taka diastase" is the proprietary patent of another firm, not Burroughs, Wellcome's, and inasmuch as he has indicated the preparation D which he requires, the pharmacist, rather than keep his patient waiting a good long time, would give what is the least of two evils. He would take the responsibility on his own shoulders and give taka diastase, knowing full well that is what the medical man requires.

2547. Mr. NEVILLE: The instance you have given us is the case E of a patent where you cannot get it from anybody but the patentee?—Yes, that is so.

2548. That is to say, "taka diastase" overcomes the strength of "tabloid"?—Yes, the patent substance, in my mind, overcomes the patent on the description of the medicine.

F 2549. Mr. NEVILLE: You think they want the drug somehow, and they cannot get it any other way?—They must have the drug.

2550. Do you ever supply anything but tabloids in answer to orders for segrada?—No, never.

2551. In all your experience have you ever known any other firm G dealing in tabloids except Burroughs & Wellcome?—No other.

Mr. WALTER: I have no questions to ask.

Mr. ERNEST CLARKE, sworn.

Examined by Mr. LEVETT.

2552. I think you are a Fellow of the Royal College of Surgeons? H —Yes.

2553. You are the surgeon of the Central London Ophthalmic Hospital?—Yes.

2554. You have been in practice over 20 years?—Yes.

2555. How long have you been acquainted with tabloids?—It is I difficult for me to quite say, but certainly a dozen years.

Nov 23, 1903

Mr. E. Clarke

2556. What idea does the word tabloid convey to your mind?—A preparation made by Burroughs, Wellcome & Co.

2557. Had you ever heard the word tabloid before except with regard to their preparation?—No.

2558. Do you in writing out prescriptions use the word tabloid? A —Yes.

2559. What do you expect the patient to get from the chemist?—The articles made and supplied by Burroughs, Wellcome & Co.

2560. Do you sometimes use the initials B. & W. or B., W. & Co.? —Sometimes I put it to make assurance doubly sure, and also, perhaps, B because some small chemist might think he could substitute the particular drug in the order for some other preparation. I wish to make quite certain that the patient gets Burroughs, Wellcome's & Co.'s drug.

2561. As far as your brother doctors are concerned, what meaning do they give to the word "tabloid"?—As far as I know they give the same C meaning to it that I do. I have never heard to the contrary.

2562. Have you never heard the word "tabloid" applied to any manufacture not made by Burroughs & Wellcome?—No, never.

Cross-examined by Mr. WALTER.

2563. Is your practice of adding "B. and W." recent, or have you D changed. We have had two classes of doctors. Are you one of the recent persons to add "B. & W.," or one of the old persons who added "B. & W." and recently dropped it?—Do you mean to say, to the prescription.

2564. Yes?—I may have done it any time. I may do it once in one E week and perhaps not again for two or three weeks.

2565. I suppose what it really comes to is, that if it is chlorate of potash or carbonate of soda, or anything of that kind, you do not bother about putting it?—They are all important. Because it happens to be a mild drug that will not kill——

F

2566. I want to arrive at some working rule by which "B. & W." are added in some cases and not in others. If you tell me it is mere chance, of course I will accept it?—It is a mere chance, because I take it that it means B. & W.

2567. I suppose you have had the same experience as other doctors G —the public say they like their medicine in tabloid form?—No.

2568. You have not had that experience?—You see, I do not prescribe much—not like a general practitioner or physician. I am an oculist.

2569. You are special, I see; practically yours is more concerned with H the use of a drug than with prescribing it?—No, it is concerned with both and I use it myself a great deal. The ophthalmic tabloids I use every day.

2570. Belladonna, atropine and things of that kind?—Atropine, that is it.

I

2571. Then you really do not come in contact very much with persons who would ask you for prescriptions in that way?—They have not asked

me. I have never been asked to have a drug in tabloid form in the way you put it. That is the only thing—that I have never been asked that.

2572. Is "tabloid" associated in your mind with any shape?—No.

2573. Not at all?—No, for instance the ophthalmic tabloids are of
A quite a different shape from the other tabloids.

2574. They are only a little smaller?—I think they differ in shape.

2575. They are little flat pilules are they not?—I have never associated the name with the shape at all.

2576. They are like a little tablet, are they not?—Which—the
B ophthalmic ones?

2577. Yes?—Yes, they are like a little tablet.

2578. A sort of tablet—of the shape of a tablet?—Yes, like a little disc.

2579. They are little compressed drugs?—Yes.

C Mr. Justice BYRNE: Have you seen them, Mr. Walter?

Mr. WALTER: No, my Lord, I have not seen those particular things; I have never had occasion to use them myself.

Mr. Justice BYRNE: They seem to be much more accurately described as little discs. They are a great deal flatter than the other.

D The WITNESS: One would not call them discs because other chemists have invented the name "disc"—gelatine discs, for instance. One understands by an ophthalmic tabloid that it is Burroughs & Wellcome's.

2580. Mr. WALTER: They are smaller in size but they are of the
E same shape as the medical ones, are they not?—No, because those are little flat things, whereas the medical ones, for instance the iodide of potassium ones, are very large and bulky compared with those, and not flat.

2581. I think if you take these and multiply the thickness and
F multiply the diameter, you will find they are very similar to the others; but they have never been associated, in your mind, with shape at all?—They have never been associated with shape.

Re-examined by Mr. NEVILLE.

2582. My friend suggests that these are like little tablets. Do you
G think they are like little tablets?—No, I think they are more like little discs.

2583. It does not very much matter Which is most like a little tablet, in your opinion—this or an acidulated drop. (A pause.) I cannot answer it, but I thought you might be able to. As I understand my friend
H suggested to you that the putting "B. W. & Co." in addition to "tabloid" was a working rule, but I understand you to say that it is a working exception?—A working exception—pure chance.

2584. The working rule being to use "tabloid" alone?—Yes.

Nov 23, 1903

Mr. F. S. Horsey.

Mr. FREDERICK SAMUEL HORSEY, sworn.

Examined by Mr. NEVILLE.

2585. Are you a photographic dealer and optician ?—Yes.

2586. Have you been in that business for the last 13 years ?—I have been as a chemist for the last 19 years, but in the business that I now am proprietor of I have only been two years and nine months.

2587. You are a qualified chemist and druggist, but for some time you have been in the photographic trade ?—Yes.

2588. Is your shop a retail shop in which you sell photographic materials to the public ?—Yes.

2589. Have you known tabloids for some time in the photographic trade ?—Yes.

2590. Have you associated those with the make of any particular firm ?—With Burroughs & Wellcome's.

2591. Had you known any other firm in the photographic trade dealing in tabloids except Burroughs, Wellcome & Co. ?—No.

2592. 1 and 2, Great Queen Street, Cheapside, I think, is your address, is it not ?—That is so.

2593. Is that the form in which Messrs. Burroughs, Wellcome & Co.'s products for the photographic trade are made up (handing a box to the Witness) ?—Yes, this and other forms.

2594. Mr. Justice BYRNE: I do not see anything on this. These are boxes full of something ?—Yes, my Lord. And here is a toning tabloid.

2595. Can one see the shape of it ?—Yes, there are two little tubes there, they are both of the same shape.

(Handing a bottle to the learned Judge.)

Mr. Justice BYRNE: These are more like the ophthalmic shape. They are of a larger size, but a great deal flatter than the first.

2596. Mr. NEVILLE: What do you say about the photographic trade ?—What does "tabloid" mean to your mind ?—A preparation made by Burroughs, Wellcome & Co.

2597. Do you think that is the meaning attached to it throughout the photographic trade ?—Certainly.

2598. Have you any doubt about that ?—None whatever.

2599. With regard to your customers, do they come and ask you for tabloid products—"tabloids" ?—Yes.

2600. What do you give them ?—The preparations of Burroughs, Wellcome & Co.

2601. As far as you can judge, is that what they want ?—That is what they want, undoubtedly.

Cross-examined by Mr. WALTER.

2602. When did you begin to sell these sort of things ?—Only since I have had the business in Queen Street, Cheapside. Possibly I may have sold them occasionally.

2603. How long ago is it?—About two years and nine months.

2604. So your acquaintance is practically of two years and nine months' duration?—Yes, practically.

2605. You know nothing about it except in connection with photo-
A graphy, I suppose?—Yes, I have been a chemist for 19 years.

2606. But your special knowledge is in connection with these chemicals?—Recent knowledge, yes.

Re-examined by Mr. NEVILLE.

2607. Take that as an additional sample, if you will, if it is a sample;
B here is the box. (Bottle handed to Witness.)?—Yes, that is a sample.

Mr. Justice BYRNE: Do you want them marked?

Mr. NEVILLE: I only want them put with the other photographic exhibits, my Lord.

Mr. Justice BYRNE: Is there a box of photographic exhibits
C put in?

Mr. NEVILLE: I think so. We do not want to multiply those.

Mr. Justice BYRNE: These are highly poisonous, so they had better be put into a box.

Mr. NEVILLE: Yes, my Lord.

D (Adjourned to to-morrow morning at 10.30.

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In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
23rd November, 1903.

BEFORE
MR. JUSTICE BYRNE.

Burroughs, Wellcome & Co.

—v.—

Thompson & Capper.

IN THE MATTER OF THE TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER OF THE PATENTS DESIGNS AND TRADE MARKS' ACTS, 1883-1888.

THIRD DAY.

MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Plaintiffs' Solicitors

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Defendants' Solicitors.

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Tel. No. 1077 Holborn.

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
Tuesday, November 24th, 1903.

BEFORE—
MR. JUSTICE BYRNE.

BURROUGHS, WELLCOME & CO.

— v.—

THOMPSON & CAPPER.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY, appeared on behalf of the Plaintiffs (instructed by Messrs. MARKBY, STEWART & Co.)

Mr. A. J. WALTER, and Mr. J. H. GRAY, appeared on behalf of the Defendants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

FOURTH DAY.

Sir WILLIAM THOMSON, sworn.

Examined by Mr. LEVETT.

Nov. 24, 1903
—
Sir W. Thomson.

2608. I think you are Surgeon to His Majesty in Ireland ?—Yes.

2609. And Surgeon to the Lord-Lieutenant ?—Not now ; I was to
A the last Lord-Lieutenant.

2610. Are you still President of the Royal College of Surgeons of Ireland ?—No, ex-President.

Nov. 24, 1903

Sir W. Thomson.

2611. How long have you been in practice ?—About 30 years.

2612. How long have you known the products which have been described as "tabloids" ?—For a great number of years. I could not tell you exactly the number of years.

2613. Since the year 1884 or 1885 ?—I should think so, certainly. I have known them since they were first published. A

2614. Have you associated "tabloids" with any particular firm ?—With the firm of Burroughs & Wellcome.

2615. Before that time had the word "tabloid" ever come to your notice ?—No, never. B

2616. As far as you know, speaking to your brother doctors, has the word "tabloid" any special meaning ?—It had this significance to me, and to any of the profession that I have spoken to, there was never any question that it was Burroughs, Wellcome & Co.'s product.

2617. Have you ever known the goods of any other firm described as "tabloids" ?—No. C

2618. Are you in the habit of using the word "tabloid" in your prescriptions ?—Yes.

2619. When you use that word "tabloid" in a prescription what do you expect the patient to get ?—I expect him to get Burroughs, Wellcome & Co.'s tabloids—the thing that I know as a "tabloid." D

2620. Some of the doctors have told us they sometimes use the letters "B. W. & Co." ?—Yes.

2621. Is that your practice ?—Not my practice ; I sometimes do.

2622. May I take it then as a general rule you do not ?—As a general rule I do not. E

2623. Can you give my Lord any reason why sometimes you do put the letters "B. W. & Co." in ?—One reason is, I think, that I practically only put it in in cases where I am ordering a tabloid which contains a poisonous drug ; and so far as my own experience goes I have the greatest reliance upon the preparations as made by Burroughs, Wellcome & Co. in that connection, and I wish to make sure, if the prescription goes into the hands of somebody in the country—say some small place—that it is Burroughs, Wellcome & Co.'s preparation that is provided. F

Cross-examined by Mr. Walter. G

2624. Apart from Messrs. Burroughs, Wellcome & Co. does the word "tabloid" convey any meaning to your mind ?—As a thing ?

2625. Yes ?—No, not apart from them.

2626. Nothing at all ?—No, I do not know what it means beyond its association with certain forms of drugs which are sent out by Burroughs, Wellcome & Co. H

2627. It conveys no idea of anything definite ?—No, no idea of anything definite beyond its association with these various shapes that Burroughs, Wellcome & Co. send out.

2628. You come, of course, into contact with the members of the public ?—Oh, yes. I

2629. Have you been asked by any of your patients as to whether they would like their medicine in tabloid form ?—Oh, yes, sometimes.

2630. What is tabloid form ?—Tabloid form, as it comes to my own mind, is some of the preparations, which are various, of Burroughs, Wellcome & Co.

2631. It does not convey any idea to your mind of anything except that ?—No.

2632. Not a compact compressed form of drug ?—Compressed, yes, that they are solid bodies. I am speaking now of these solid bodies which are called tabloids.

2633. We can get so far, that it does convey the idea of compression to your mind ?—Oh, yes.

2634. Is it a large thing ?—It varies in size.

2635. I mean is the largest large ?—I do not know what you call large. I do not know what you wish to convey to me by "large." I know, for instance, I have taken some of their tablets myself——

2636. Some of their tablets ?—Tabloids—as large as a two shilling piece. Then there are others that are used for hypodermic purposes, and so on.

2637. I should very much like to know the tablet that is two shilling size. What is it ?—There is sulphate of magnesia, for instance, effervescing.

2638. A tabloid ?—Yes.

2639. Two shilling size ?—Yes.

2640. To be swallowed ?—Oh, no. Not to be swallowed, except when it is dissolved.

2641. Mr. Justice BYRNE : It is an effervescing one ?—It is an effervescing one.

2642. Mr. WALTER : I was wondering what the result was. When they ask for their medicine in tabloid form, you do not think there is any idea in the mind of the public as to the shape ?—I have never cross-examined them about their idea, as to what they wanted to convey to me. What I accepted was that they wanted the drug or medicine, or whatever it was, conveyed in some solid form that they could swallow comfortably.

2643. A drug in solid form that they could swallow comfortably ?—Yes.

2644. And something that it would be convenient to travel with ?—Yes. To me it meant Burroughs, Wellcome & Co.

2645. Mr. Justice BYRNE : And if you prescribed tabloids of a certain drug, and they were supplied by Burroughs, Wellcome & Co. in the form of a complete sphere like a pill, you would not object to that ?—If they were supplied by Burroughs, Wellcome & Co. I should not object.

2646. So long as it was in a compressed form you would attach no importance to the form—you would think it was complied with ?—Yes. I know, my Lord, that there are various shapes of these tabloids.

2647. Mr. WALTER : All in the nature, more or less, of flat discs ?—No, there are some of them with very considerable elevations upon them.

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Sir W. Thomson.

2648. Bi-convex ?—Oh, no, a projecting spur, if I may so call it, upon the top of one.

2648A. Yes, bi-convex ?—I should not call that bi-convex.

2648B. Mr. Justice BYRNE: Some were produced, Mr. Walter, of a shape that seemed to have something on one side rather. That must be for external use ?—For external use. A

2648C. Mr. WALTER: Those are soloids ?—No.

2648D. Have you met the word in general literature ?—No, not to my knowledge, certainly.

2648E. Not in "Punch" or any of the classics ?—No, certainly not—it may be, but I have never met it. B

2649. There is a journal called the "Pharmaceutical Journal," which I believe has some circulation amongst the medical profession ?—Not amongst the practising members of the profession, I think; I do not know it myself, except as a name. C

2650. I see even that respectable journal indulges in "tabloid restaurants." That would hardly convey any idea to your mind of Burroughs & Wellcome, would it ?—No.

2651. "Tabloid meals," and so on ?—I should think I know what they mean to convey; I know what occurs to my mind. D

2652. Reading that, what does that convey to your mind ?—I should say that they mean to convey that there is a something that they are speaking of, in small bulk, and, if you like, in compressed form. To me if they use the word "tabloid" then I say it is of the character of "tabloid" that is produced by Burroughs & Wellcome, that is all. E

2653. Assume it to be stated that a tabloid meal can be consumed in three minutes ?—I think a tabloid meal can be consumed in very much less time.

Mr. Justice BYRNE: You can get enough of it down in that time.

2654. Mr. WALTER: As to what a "tabloid meal" would convey to your mind, as you very fairly said that had relation to compression ?—And small size. F

2655. Size and so on, quite right. When you are anxious that Burroughs & Wellcome's products should be supplied, I understand you put "B. & W." ?—Yes. G

2656. I happen to see here in "The People," of Sunday, the same kind of thing; some one is talking about Boswell's Johnson, and they say "The public now wants its biography boiled down into tabloids"?—I do not think you boil them down into tabloids.

2657. That would convey the same sort of general idea to your mind ?—Concentration, small bulk. If you use the term "tabloid" I think it would not convey to my mind any other idea than the article that is produced by Burroughs & Wellcome. That is all I have to say. H

Re-examined by Mr. LEVETT.

2658. Do you know in the medical profession any article known as a biographical tabloid ?—No; I do not. I have not heard of it. I

2659. Do you know of such a thing as a biographical tablet ?—No, except the tablet one puts on a wall, if you like.

Sir THOMAS RICHARD FRASER, sworn.

Examined by Mr. NEVILLE.

2660. Do you live at 13, Drumsheugh Gardens, Edinburgh ?—Yes.

2661. Are you an M.D., LL.D., Fellow of the Royal College of
A Physicians, Edinburgh, and Fellow of the Royal Society ?—I am.

2662. Are you Professor of Materia Medica and of Clinical Medicine in the University of Edinburgh ?—I am.

2663. And physician to the Royal Infirmary, Edinburgh ?—I am.

2664. How many years have you been in practice as a physician ?—
B About 30 years.

2665. Have you for a good many years past known of tabloids ?—Yes, for many years.

2666. What meaning does the use of the word "tabloid" in the drug trade convey to your mind ?—Any pharmaceutic product which is manu-
C factured by the firm of Burroughs & Wellcome.

2667. Have you in your experience come across any drugs sold under the name of "tabloid" except the manufactures of Burroughs, Wellcome & Co. ?—No, I have not.

2668. I think you do not prescribe ?—Not much.

D 2669. But have you recommended the drugs supplied by Burroughs & Wellcome to friends and patients ?—And to patients and to the physicians, the doctors, in charge of patients whom I see in consultation.

2670. Under what name have you so done ?—"Tabloids."

2671. Did you ever hear of the word "tabloid" until you became
E acquainted with Burroughs & Wellcome's products ?—No, never.

Cross-examined by Mr. WALTER.

2672. Do I understand that any pharmaceutic product of Burroughs & Wellcome is associated in your mind with the term "tabloid" ?—No, not any; because I believe some are called "soloid," and so on.

F 2673. That is one other. But what is it—is it a liquid ?—Which ?

2674. Do you understand what a pharmaceutical product which is a liquid would be ?—No—a compressed solid.

2675. It is a compressed solid. Does the word "tabloid" convey any meaning to your mind apart from Burroughs & Wellcome ?—No, I
G do not know that it does.

2676. It suggests nothing to you as to the character and the way in which the goods are put up ?—Yes, by association—by seeing those things which Burroughs & Wellcome produce under that name, I do naturally assume a form for them.

H 2677. When you specify a tabloid, you expect your patient will receive a drug in that form ?—In those forms.

2678. Shall I be wrong in saying you expect them to get a kind of tablet ?—I do not know what you mean by that, quite.

2679. A kind of medical tablet ?—The only tablet we have—I mean
I official tablet—has no particular resemblance to the tabloid.

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Sir T. R. Fraser.

2680. Did you know Wyeth's goods at all ?—Very incidentally.

2681. Allen & Hanbury's, do you know ?—I know the names of these firms, but I have no practical knowledge of their goods.

2682. Of their particular form of product ?—No.

2683. Is something of *that* kind what is associated in your mind with "tabloid" (Handing) ?—Yes, clearly. A

2684. I rather gather that you are not directly associated with the public, in a sense. Does the public see you ?—Yes; I receive a large number of the public.

2685. I rather gathered—not from my friend—I did not know—— B

Mr. NEVILLE: Sir Thomas does not prescribe; he leaves that to the doctors.

2686. Mr. Justice BYRNE: You practise only as a consultant ?—Only as a consultant.

2687. Mr. WALTER: Have any patients suggested to you that they would like their medicine in tabloid form ?—No, I do not think they have had an opportunity of saying so, because I generally confer with the doctor. C

2688. Has it ever occurred to you what the meaning of "tabloid" was ?—I have defined it—yes—no more than what occurred to me. I have a very definite opinion as to what "tabloid" is. D

2689. I mean apart from the manufacturer ?—No.

2690. It does not convey anything to you apart from the manufacturer ?—I have told you it is generally associated in my mind with such things as you put before me. E

2691. Do you know anything of the literature of "tabloid"?—The literature ?

2692. Yes, its use in general literature ?—No, I have nothing to do with the general literature of "tabloid."

2693. You are acquainted with the literature of Messrs. Burroughs & Wellcome in relation to it ?—Yes. F

2694. That is considerable ?—Yes. I have been for 20 years.

2695. You knew it was their trade mark, I suppose ?—I know it as their trade mark, but I do not know how long I have known that.

Re-examined by Mr. NEVILLE. G

2696. Getting on for 20 years you have known tabloids ?—Yes.

2697. And the majority of the tabloids that you have known have been more or less of the shape of the little thing in front of you ?—Quite so.

2698. Has that led you to associate with the word tabloid a particular form ?—Yes, exactly. H

2699. Apart from that familiarity with the drug does tabloid convey any connection to your mind ?—None whatever.

2700. My friend has asked you about what you expect your patients or your friends to get when you recommend the use of tabloids, and you told him that you expected them to get a drug of a particular shape. Is that all you expect ?—Prepared by Burroughs & Wellcome. I

2701. And from your knowledge of Burroughs & Wellcome's products do you know that if they go to them for what you recommend they probably will get the drug in something like the shape before you ?—Yes.

A 2702. Your experience has taught you that ?—Yes, I know they issue this form.

2703. But what my friend was suggesting to you, as I understood it, was that when you recommended tabloids all you cared for was the form in which the medicine was taken, and not the maker of the medicine ?—

B By no means.

2704. Did you mean that ?—No.

Sir JAMES CRICHTON BROWNE, sworn.

Examined by Mr. LEVETT.

2705. I think you are a Doctor of Medicine ?—Yes.

C 2706. A Fellow of the Royal Society ?—Yes.

2707. You are a Visitor in Lunacy ?—I am.

2708. And a lecturer on mental diseases ?—Yes.

2709. For how long have you been in actual practice ?—About 38 years.

D 2710. Are you in practice now actually, or not ?—I do not immediately practise, but I am in consultation with medical men in all parts of the country with regard to Wards in Chancery.

2711. For the last seven years you have done that ?—For the last 20 years as the Lord Chancellor's visitor.

E 2712. You told me that you are not in ~~active~~ active practice now ?—I am not in active practice, except I prescribe for my own family. I am constantly, of course, seeing prescriptions in all parts of the country.

2713. I want to get the date. How long have you not been in actual practice ?—I have not been in actual practice for 20 years. I am in consulting practice.

F 2714. Do you remember Burroughs & Wellcome's drugs being introduced ?—I recollect them for at least 15 years.

2715. Under what name were they introduced ?—They were introduced, I suppose, before that, but they came to my knowledge about 15

G years ago by seeing them quoted in the medical papers, by advertisements, and by specimens sent to me.

2716. Under what name did they come to your knowledge ?—"Tabloid."

2717. Can you tell my Lord what the meaning of the word "tabloid"

H is in the medical profession ?—I do not know what was in the mind of the inventor of the term, but I recollect at first thinking it was derived from "tabula," which means a plate, or plank, or table, and the word "oid." Then it occurred to me if that was the case it must be a compressed term, because it ought to have been "tabuloid," and I cannot say

I what was in the mind of the inventor.

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Sir J. C. Browne.

2718. What do the medical profession, as far as you know, mean by "tabloid"?—The compressed goods manufactured by Burroughs & Wellcome.

2719. Had you ever heard the word used before it was applied to Burroughs & Wellcome's compressed goods?—Never, but I recollect looking it up in the "Standard Dictionary" some years ago. I found "tablet," but not "tabloid." I have since seen it in one standard dictionary, the "Century," but there it is given as a trade mark for a compressed drug.

2720. Have you in your experience known the goods of any other firm described as "tabloids"?—No.

2721. Have you actually in practice prescribed tabloids?—Frequently. For my own family or friends I have frequently prescribed them.

2722. What did you mean the patient to get when you prescribed a tabloid?—Burroughs & Wellcome's products.

2723. In writing out the prescriptions did you ever use the letters, "B. W. & Co."?—Yes, I have. I have and I have not.

2724. Which was the rule—to use them or not to use them?—I think I have in the past used them more frequently so as to give emphasis and to make it more clear what I wanted.

Mr. WALTER: I have no questions to ask.

Mr. Justice BYRNE: Are you getting nearly to the end of these? There ought to be some limit.

Sir R. D. Powell. Bart

Sir RICHARD DOUGLAS POWELL, Bart sworn.

Examined by Mr. NEVILLE.

2725. You are an M.D., a Fellow of the Royal College of Physicians and Surgeons, Physician Extraordinary to the King and Physician in Ordinary to Her Majesty the late Queen Victoria. You were Consulting Physician to the Middlesex, Brompton, Ventnor, and St. Mark's Hospitals, ex-President of the Clinical and Medical Societies, and Vice-President of the Royal Chirurgical Society, and you practise at 62, Wimpole Street, London. Is that right?—Yes.

2726. Do you know the drugs sold under the name of "tabloids"?—Yes.

2727. How long have you known them?—For a good many years. I could not say exactly.

2728. In your mind what is the meaning in the drug trade and in the profession of the word "tabloid"?—It is a drug in a compressed form manufactured by Messrs. Burroughs & Wellcome.

2729. Have you ever known the drugs of any other maker sold under that name?—No.

2730. Have you yourself used the drugs in prescriptions?—Yes, I have frequently used them.

2731. And under what name do you describe them?—"Tabloid"

Cross-examined by Mr. WALTER.

2732. With or without B. & W. ?—I have sometimes added B. & W. for the sake of emphasis.

2733. When did you first become acquainted with the name—many A years ago, I suppose ?—A good many years ago.

2734. Sir James Crichton-Browne has told us what he thought about when it came out. Did any idea cross your mind when the word tabloid came out from the look of the word ?—Something like a little table—something of that idea.

B 2735. That occurred to you ?—Yes, it occurred as a reason for originating the name, possibly.

Re-examined by Mr. NEVILLE.

2736. Did you ever hear of the word except when you heard it used in connection with Burroughs, Wellcome & Co.'s drugs ?—No.

C Mr. LEVETT: If your Lordship pleases. My learned friend, Mr. Neville, has come to the end of the medical witnesses for the present, and I will now take the Army and Navy Stores.

Mr. Justice BYRNE: I have not counted them, but I think you have had a very representative number.

D Mr. LEVETT: We could have had a very much larger number.

Mr. Justice BYRNE: You must not call every medical man who has heard of your preparations or I shall be here for months.

Mr. LEONARD JOHNSON, sworn.

Examined by Mr. LEVETT.

E 2737. I think you are a qualified chemist and druggist ?—Yes.

2738. You are the department manager of the drug department of the Army and Navy Stores ?—Yes.

2739. I think you have been there for nine years ?—Yes.

2740. And how long have you been in the business ?—27 years.

F 2741. Are you acquainted with the product called tabloids ?—Yes.

2742. Will you tell my Lord what you mean by a tabloid ?—The preparation made by Burroughs & Wellcome—a compressed drug made by Burroughs & Wellcome.

2743. Has the word "tabloid" ever been associated with the name G of any other maker ?—No, not to my recollection.

2744. Before you heard it used by Burroughs & Wellcome had you ever heard the word ?—Yes, I heard it as Wyeth's tabloids, which I understand were made by Burroughs & Wellcome.

2745. Can you tell me when that was ?—That was first quoted in the H "Army and Navy List," I think, in 1887.

2746. I think we have got here now an actual current "Army and Navy List." Just look at that. Is that the current list. (Handed) ?—Yes.

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2747. Under what name are Burroughs & Wellcome's drugs catalogued ?—As tabloids or compressed drugs.

2748. Are there any other drugs referred to in that list as tabloids ?—No.

2749. As far as you know what meaning has "tabloid" in the drug trade ?—A compressed drug made by Messrs. Burroughs & Wellcome. A

2750. Have you ever known it applied to a drug made by anyone else ?—No.

2751. When the Army and Navy Stores gets an order for "tabloid" or "tabloids" what goods do they supply ?—Burroughs & Wellcome's. B

2752. Do you actually attend to the selling part of the counter or not ?—No, not myself.

Cross-examined by Mr. WALTER.

2753. You do not personally come in contact with the public in that way ?—Yes, repeatedly. I do not actually sell myself, bnt I am repeatedly at the front. C

2754. You see the prescriptions ?—Yes.

2755. And "tabloid" B. & W. is very familiar to you ?—Yes.

2756. Or "B. W. & Co." ?—Yes.

2757. May I take it that it is in a very large number of instances you get "B. W." or "B. W. & Co." after the word "tabloid" ?—Yes, and "tabloid" as well. Tabloids of any particular drug we should supply Burroughs & Wellcome's. D

2758. In a large number of instances you get "B. & W" ?—I should not say that. E

2759. You have a very large number with "B. & W" ?—We have a very large number of prescriptions ordering "tabloids."

2760. And also a very large number with "B. & W." ?—Probably.

2761. Have you ever had an order for tabloids which were not Messrs. Burroughs & Wellcome's ?—Yes, we have had instances where they have not been made by Burroughs & Wellcome. F

2762. In prescriptions ?—Yes. I should say not listed as made by Burroughs & Wellcome—it has not been on the list.

2763. Not on the list ?—Not in their catalogue.

2764. Some of those, I suppose, have been proprietary articles ?—No. G

2765. They have not been articles made by other firms ?—No.

2766. You do not recollect any cases of "tabloids" of any other makers ?—No.

2767. Did you know what was intended ?—Yes. It was a preparation made by Burroughs & Wellcome—a compressed drug. H

2768. But they did not make them ?—But we got them made—they make them for us; we should send down and they would make them for us.

2769. You have never had a case where "tabloid" has been used for drugs where you knew what they meant, and they were not Burroughs & Wellcome's ?—No. I

2770. You cannot recollect any case ?—I cannot.

2771. Have you been through your books at all for the purpose of this action to see ?—No, I know what tabloids and tablets are quoted in the list.

A 2772. People come in and bring in prescriptions—outside what is in your own list ?—Very seldom.

2773. People do not bring in prescriptions containing preparations which are not advertised in your own list ?—Not for tabloids.

2774. Not in prescriptions ?—No.

B 2775. Does your list go before Messrs. Burroughs & Wellcome ?—It does.

2776. You send in the part relating to their list ?—I do.

2777. To be considered by Messrs. Burroughs & Wellcome ?—Yes.

2778. I have not seen your list. Do you put it in "trade mark."

C Do you indicate that the word tabloid is a trade mark in your list ?—They put it there.

2779. They put it there ?—With my permission.

2780. Of course, but they put it in your list ?—They do. They revise the list.

D 2781. I understand you personally do not serve at the counter ?—No, not behind the counter.

2782. Do you get written orders sent in for medicines ?—Yes.

2783. I mean not prescriptions—written orders from customers ?—Yes.

E 2784. You keep, I believe, a large number of proprietary medicines there, do not you ?—Yes.

2785. Quite apart from Burroughs & Wellcome ?—Yes.

2786. Do you get any of those ordered as tabloids ?—No.

2787. You do not recollect any ?—I do not recollect it—no.

F Re-examined by Mr. Levett.

2788. Can you give me any idea what proportion of your orders have got the letters B. W. & Co. on them, and what proportion has not got the letters ?—No, I cannot. It is used indiscriminately. Sometimes it is "tabloid," sometimes "tabloid, B. W. & Co.," sometimes "tabloid,

G Burroughs. Wellcome & Co." In all instances we supply Burroughs & Wellcome's products.

2789. Sometimes they put the name in full even ?—Sometimes in full.

2790. Suppose you get an order simply for a tabloid which is not in

H your list, just tell my Lord exactly what you would do in that case ?—If it is not quoted in Messrs. Burroughs & Wellcome's list I apply to the prescriber. I apply to Messrs. Burroughs & Wellcome, and if they do not make it I apply to the prescriber, and if he says he is desirous of obtaining it in that particular form, I ask them to make it for me. They

I make a minimum quantity of 500.

2791. Burroughs & Wellcome will make it for you although it is not in their list ?—Yes.

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Mr. L. Johnson.

2792. How often does it happen that you get an order for a tabloid that is not in the list?—It is very unusual indeed.

2793. How long is your list. I have not seen it. It is a long list of tabloids you have in your book?—Yes, I think it is a page and a quarter.

Mr. Justice BYRNE: Let me look at it. (Handed.)

Mr. LEVETT: Your Lordship sees the list. I believe it contains many other makers' goods as well?

Mr. Justice BYRNE: Yes.

2794. Mr. LEVETT: Taking it generally, your list of drugs contains articles made by many manufacturers?—Yes.

2795. But Burroughs, Wellcome & Co., are the only firm whose goods are described as tabloids?—Yes.

2796. Mr. Justice BYRNE: To be exactly accurate, they are described as "tabloid brand," and not described as "tabloids"—"tabloid brand medicine case," and "tabloid brand products." There are other brands. They are nowhere called "tabloids" simply. (To the Witness): I think I am right in that. Is that so?—Quite right, my Lord; that is so.

Mr. NEVILLE: I have been consulting with my learned friends. I am in a little difficulty here, because I am only a lieutenant, but after what your Lordship said I am exceedingly anxious not to be what may be thought wearisome.

Mr. Justice BYRNE: I do not want to stop you if you say you have two or three medical men of quite a different class—say country doctors, or anything of that sort.

Mr. NEVILLE: I have doctors from, I think I may say, all parts of the United Kingdom, still uncalled. The witnesses that we have are in a compressed form. They have been reduced to what we consider reasonable proportions; but still it does not follow that what we think reasonable and what the Court think reasonable are quite the same. We have 19 more medical witnesses, and they will say, of course, exactly what the other doctors have said. I do not suggest any of them will do otherwise than give the same evidence; that is what they are called for. I am quite willing to give my friend a list of their names, and if he wishes me to call any of them I will call them.

Mr. Justice BYRNE: Have you any doctors of what I may call a different stamp of practice in different parts of the Kingdom—men in a small way of practice—country docters?

Mr. NEVILLE: I have no doubt we have, my Lord.

Mr. Justice BYRNE: Speaking for myself, subject to anything Mr. Walter may suggest, you have called so many leading practitioners now that unless I hear to the contrary, I should be bound to take it that a very large number of leading practitioners say the name was as they stated, and Mr. Walter will make no observations because you have not called more.

Mr. WALTER: None whatever.

Mr. Justice BYRNE : I suggest that you might have some of a different stamp.

Mr. NEVILLE : I will have that investigated and see. We certainly have provincial doctors.

A Mr. Justice BYRNE : You said you had another 19 witnesses you proposed to call, but Mr. Walter will make no observations that you did not call them, and we may take it they will give evidence to the same general effect as that of the witnesses already called. You do not object to that, Mr. Walter.

B Mr. WALTER : Not in the least, my Lord.

Mr. NEVILLE : If your Lordship pleases. Subject to that, I will look into it and consider it on that point.

Mr. Justice BYRNE : Anything you think essential I will not exclude, but I just throw that out as a possible class not so well

C represented.

Mr. NEVILLE : If your Lordship pleases.

Mr. ALBERT EDWARD HENRY BLACKBURN, sworn.

Examined by Mr. NEVILLE.

2797. Do you trade under the name of the firm of Mottershead &

D Co., Dispensing Chemists ?—Yes.

2798. Have you had 24 years' experience as a pharmaceutical chemist ?—I have been connected with the trade for 24 years. I have not been qualified for 24 years.

2799. You have been 10 years in your present place of business ?—

E Yes, as proprietor.

2800. Mr. Justice BYRNE : Where is this business ?—In Manchester.

2801. Mr. NEVILLE : 7, Exchange Street, Manchester, is your address ?—That is so.

F 2802. Have you had a large experience of the trade before you were proprietor and since ?—Yes. I was apprenticed in the business that I have now, and I have had experience in London, in Ireland, and in most of the towns in England.

2803. A widely extended experience ?—Yes, I may say so.

G 2804. How long have you known Burroughs, Wellcome & Co.'s compressed drugs ?—I have known them something over 20 years. I knew Burroughs, Wellcome & Co. were sellers of drugs.

2805. Do you know tabloids ?—I have known tabloids, I think, since 1884, about 20 years.

H 2806. What has been the meaning and what is the meaning of the word "tabloid" to your mind ?—I should say that a tabloid was a compressed tablet prepared by Burroughs, Wellcome & Co.

2807. As far as your experience goes has the use of that word for compressed drugs been entirely confined to Burroughs, Wellcome & Co. ?

I —Yes, it has.

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Mr. A. E. H. Blackburn.

2808. Did you ever hear of the word before you knew it in connection with their goods?—No, never.

2809. Since then have you known it exclusively in connection with their goods?—I saw an advertisement of, I think they were, "Anti-fat" tabloids, or something, in a paper. I drew Burroughs, Wellcome & Co.'s attention to it, and I believe the thing was stopped. That is a few years ago.

2810. That is the only instance you have ever known?—That is the only instance I have ever known.

2811. Was Taylor the name of the man?—Yes, I believe it was.

2812. That is one of the three actions I mentioned to your Lordship. With regard to your knowledge of the trade, in your opinion is it common knowledge in the trade that tabloids are the make of Burroughs, Wellcome & Co.?—Yes, I should say so. I never had any doubt on that point.

Cross-examined by Mr. Walter.

2813. Did it convey to your mind that it was a compressed tablet?—Yes. I should say that a tabloid was a tablet, but that a tablet was not a tabloid.

2814. A "tabloid" is a "tablet," but a "tablet" is not a tabloid?—Yes.

2815. "Tablet" you have known well?—Oh, yes.

2816. I suppose you also are the recipient of much literature from Messrs. Burroughs, Wellcome & Co.?—Yes, I think I get pretty well posted up.

2817. They keep you pretty well posted up. They let you know which is their trade mark?—Yes.

2818. I daresay you have noticed that they now call it "tabloid products"?—No; I take it that "tabloid products" would refer to the class.

2819. On all their lists you see "tabloid products"?—I think the heading of the list is "tabloid products," but that list contains the tabloids—I think that is to distinguish it—but I do not know, I have not asked, and it is only my opinion.

2820. Those are the compressed tablets I suppose you mean?—Yes, prepared by Messrs. Burroughs, Wellcome & Co.

2821. So you understand?—Yes.

2822. You get a good many prescriptions I suppose?—Yes, from 100 to 120 a day.

2823. And do you get "tabloids" prescribed?—Yes, very frequently.

2824. We have heard from a good many others that they get "B. & W," or "Burroughs & Wellcome," or "B. W. & Co."?—I do not quite follow you.

2825. Do the prescriptions for "tabloids" have "B. & W.," or "Burroughs, Wellcome & Co.," or "B. W. & Co."?—Not all, not by any means.

2826. But in a large number they do?—No, I think the number is small compared with those who merely specify "tabloids."

2827. When they are added what do you suppose it is for ?—When the initials are added do you mean ?

2828. Yes ?—Well, I should think they are added to emphasise the tabloid.

A 2829. Do you get orders for drugs other than by prescriptions—written orders ?—Yes. For drugs you say, not for compressed drugs.

2830. We will come to that in a moment. Compressed drugs are still drugs, of course ?—Yes, in a special form.

2831. Did you ever have the misfortune to wonder what "tabloid"

B meant ?—No, never.

2832. You never have. It has never been applied within your knowledge to goods other than those supplied by Messrs. Burroughs, Wellcome & Co. ?—No. If I got an order——

2833. Not "If you had got an order." Have you ever got one ?—

C Will you kindly repeat your question ?

2834. Have you ever got orders for goods that were not made by Messrs. Burroughs & Wellcome under the term "tabloid" ?—No, never.

2835. You never had such an order ?—Do you mean without specifying the name ?

D 2836. I asked you whether or not you had ever had orders under the name of "tabloids" for goods that were not listed by Messrs. Burroughs, Wellcome & Co. ?—Oh, yes, I did not understand your question—yes, I have.

2837. Frequently ?—No, not frequently, because they have a very

E large list, but I have had such orders.

2838. Have you in any of the cases known what was intended ?—Yes, I have taken it that it was a "tabloid" made by Burroughs, Wellcome & Co. that was wanted, and I have not found it in the list.

2839. And then what do you do ?—If it has been a prescription I

F have wired for it to them, and if they have replied that they do not make that "tabloid," I have consulted the prescriber, and asked him what I should do.

2840. We have heard of a case where it was a perfectly well known drug, and you knew perfectly well what was intended, but you have

G never had such a case ?—I do not follow you at all.

2841. Suppose it was someone else's patent medicine that was prescribed; for instance, have you ever had an order for "taka diastase" ?—I should say in a minute that we could not supply it, that Burroughs & Wellcome did not make it.

H 2842. Is that what you should do ?—Yes.

2843. Although you knew what "Taka-diastase" was ?—Yes.

2844. And the patient might be badly in want of it ?—I should consult the prescriber at once. I might have the knowledge in my mind that the prescriber meant tablets prepared by Messrs. Parke, Davis & Co.,

I but I should have no right to supply those.

2845. Knowing perfectly well what was ordered ?—If I do not know what the prescriber meant I must go and ask him.

2846. Then is the hand of Messrs. Burroughs & Wellcome so heavy upon the trade ?—Oh, no, not at all, the hand of Messrs. Burroughs &

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Mr. A. E. H. Blackburn.

Co. does not press heavily on the trade at all ; but if a slip is made in a prescription or in anything else, I am bound to follow the slip. If tabloid——

2847. Never mind, we will not discuss the matter any further. You have never done it, you say ?—No, I have not. A

2848. And you have had such cases ?—Oh, yes, I have.

2849. Mr. Justice BYRNE : And then you say you have invariably consulted the prescriber ?—That is so, my Lord. I can explain to your Lordship that if tabloid taka-diastase was ordered, I should consult the prescriber, and ask if him if he did not intend tablet taka-diastase which B was made by Messrs. Park, Davis & Co. because Messrs. Burroughs & Wellcome did not make a tabloid of taka-diastase there is a probable error on the face of the prescription I take it—a slip.

2850. Mr. WALTER : Do you ever get orders for "Tabl^{s}. B. & W." ? —Yes, I do, or tablets. C

2851. Tablets B. & W. ?—Yes.

2852. Those you supply, of course ?—Yes, I should supply tablets or tabloids made by Messrs. Burroughs, Wellcome & Co.

2853. They do not make tablets, of course ?—No, they make tabloids.

2854. But why do you supply them ?—You said "tabl." D

2855. Yes, and I also said "tablets "—you gave me the benefit of "tablets " ?—If "Tablets B. W. & Co." were ordered, I should supply tabloids prepared by Messrs. Burroughs, Wellcome & Co.

2856. Yet, if you got an order," Tabloids taka diastase, P. D. & Co.," you would not supply them ?—No, I should not. E

2857. I suppose you understand it, but I confess I do not ?—Yes.

Re-examined by Mr. NEVILLE.

2858. Do you often get orders for "tabl." ?—No, it was an assumed case I thought—I never saw a prescription like that.

2859. You never did ?—No, never. F

2860. But you told my learned friend just now that you did : that you had got orders for "Tabl." ?—Then I am sure I beg your pardon ; I thought it was an assumed case that he was putting. I certainly did not intend to convey to either him or yourself that I had got orders with that contraction, because I had not. G

2861. I see. You dealt with it as a hypothetical case, and you dealt with it as if you did ?—Yes.

2862. But you never really did get such an order ?—No.

Dr. H. M. Allen

Dr. HENRY MARCUS ALLEN, sworn.

Examined by Mr. NEVILLE. H

2863. I believe you are a Fellow of the Royal College of Physicians, and a Member of the Royal College of Surgeons ?—I am.

2864. And do you practise at Brighton ?—Yes.

2865. Do you practise as a general practitioner, or are you entirely a consultant ?—I am entirely a general practitioner.

2866. I forget whether I gave your address, but it is Palmeira Square, Hove, is it not ?—Yes.

A 2867. How long have you practised as a general practitioner ?—For nearly 30 years.

2868. Have you known tabloids in the drug trade for some years past ?—Yes, ever since they were first introduced.

2869. And what meaning has "tabloid," to your mind ?—A com-

B pressed product of Messrs. Burroughs, Wellcome & Co.

2870. Is that, in your opinion, the meaning which obtains in the profession ?—I think so.

2871. And have you ever known any other drugs sold under the name of "tabloids" except those made by Messrs. Burroughs, Wellcome

C & Co. ?—I have never come across any.

2872. Have you ever come across the word in the drug trade except in connection with Messrs. Burroughs, Wellcome and Co.'s goods ?—No.

2873. Did you know of the word before you heard of it in connection with Messrs. Burroughs, Wellcome & Co.'s preparations ?—No, never.

D 2874. Do you prescribe tabloids for your patients sometimes ?—Oh, yes, very extensively.

2875. And when you so prescribe, what do you expect and intend the dispenser to give them ?—I should insist on having Burroughs, Wellcome & Co.'s.

E 2876. Do you sometimes use "B. W. & Co." or "Burroughs, Wellcome & Co." in addition to "tabloid"?—In a prescription, yes.

2877. Always, or sometimes one way and sometimes the other ?—Whenever I have any doubt as to whether I am going to get the proper article I put "B. W. & Co." People sometimes go to very doubtful

F chemists.

2878. When you do it you do it as a precaution ?—As a precaution to be sure to get the right article.

2879. But when you have no reason to doubt the respectability of the dispenser do you treat "tabloids" as sufficient ?—Certainly.

G 2880. Of course you are in constant connection with the public ; you see a great many people in the course of your rounds. Have you any reason to believe that "tabloid" conveys a different impression to their mind than what it does to yours ?—No.

2881. As far as you know is that the meaning generally attributed to

H "tabloids" ?—Absolutely so.

Cross-examined by Mr. Walter.

2882. What is the meaning it conveys to your mind ?—"Tabloids" ?

2883. Yes ?—It does not convey any meaning to my mind beyond a pharmaceutical product.

I 2884. Whether it is liquid or solid you do not know ?—Solid—compressed.

2885. Has shape anything to do with it ?—Not to my mind.

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2886. It never has any idea in your mind—shape has nothing to do with it ?—I cannot say definitely that it has, no.

2887. Have you ever thought about the meaning of the word ?—Yes, I have. I never arrived at any conclusion.

2888. You never arrived at any conclusion ?—No, as to what it meant.

2889. You know the suffix "oid" ?—Yes, I have thought of that.

2890. Perhaps you thought of that when the word first came out ?—That is a great many years ago. I cannot tell you that. It must be nearly 20 years ago.

2891. But it conveys no meaning to your mind ?—Nothing except as the product of the firm.

2892. Except as a product of a firm ?—Of the firm of Burroughs, Wellcome & Co.

2893. Philology you have never studied of course; philology is not one of your subjects ?—No, still I know, of course, what you are referring to.

2894. It is a pretty obvious sort of word, is not it ?—Well it might be so, yes; still I do not gather that it means anything definite.

2895. Nothing else would do like a tablet for instance ?—Well, of course, it sounds very like it.

2896. It would not be a great stretch of imagination to attribute that meaning to it, do you think ?—No.

2897. Do the public like their medicine in tabloid form ?—I think they do, because they dose themselves very freely with them without consulting us.

2898. What do you think the public thinks tabloid form is ?—I cannot tell you. I presume that they go and get the best article for their money in the shape of Burroughs, Wellcome & Co.'s.

2899. The form. Burroughs, Wellcome & Co. have nothing to do with the form ?—Oh, "form"—I beg your pardon.

2900. When they talk about medicine in tabloid form, what do you suppose they mean ?—I do not know. I do not know what is in their mind. I simply look upon it as a drug in a convenient form.

2901. It is in the form of a tabloid; there must be some sort of form to which "tabloid" can be attributed; but you cannot assist us ?—No.

2902. I should like to have some working rule on which you do or do not add the "B. W. & Co." ?—I put "B. W. & Co." if I think perhaps people might go somewhere where they would get some substitute.

2903. I have heard this so often. It is a recognised thing, is that so ?—No, I do not think it is recognised. It is quite possible.

2904. Mr. Justice BYRNE: Is it something of this sort? There are a certain number of chemists in Brighton—if you know your patients go to one or other of those chemists you know they will get what they want. If they go somewhere else you are not so sure ?—They might get a base imitation.

2905. Mr. WALTER: But I suppose you do not know where half your patients go ?—Oh, yes I do. You see they bring their prescriptions back, and I see where they have been.

2906. But the chemists at Brighton, of course, are of a very high standing?—Yes, many of them are.

2907. Is that really the rule, doctor, do you think?— What?

2908. Do not you add B. W. & Co. wherever it is anything except throat lozenges, or something of that kind? If you are giving them a drug that has got anything in it beyond what one may call a simple, do not you add B. W. & Co. in those cases?—I add B. W. & Co. occasionally. Sometimes I do not put B. W. & Co..

2909. There is no definite rule?—I am very anxious people should get the right article, and if it is in my mind that it is important they should have a very particular drug I add B. W. & Co, knowing I should get the right article.

Mr. WALTER: If it is a matter of no importance what drug they get, then you do not put it.

Re-examined by Mr. NEVILLE.

2910. Do you ever recommend or prescribe tabloids when you intend them to get the products of any other firm but Burroughs, Wellcome & Co.?—Never.

Dr. WALTER WHITEHEAD, sworn.

Examined by Mr. NEVILLE.

2911. Are you a Fellow of the Royal College of Surgeons of Edinburgh, and are you consulting surgeon to the Manchester and Salford Hospital for Diseases of the Skin, and the Salford Lock Hospital, and surgeon to St. Mary's Hospital, Manchester?—Yes.

2912. And do you practise in Manchester?—Yes.

2912A. I think you practise in London as well?—No, I do not.

2912B. Your practice is confined to Manchester?—Yes.

2912C. How long have you been in practice?—Nearly 40 years.

2913. All that time in Manchester?—No. I was five years in Nottinghamshire.

2914. But the last thirty-five years, say, in Manchester?—Yes.

2915. Do you know in the drug market tabloids?—Yes.

2916. What meaning does "tabloid" bear to your mind?—I have always associated the term with Burroughs, Wellcome & Co.

2917. And have yo in the course of your practice prescribed tabloids?—Yes.

2918. Do you sometimes prescribe tabloids simply, or do you always put Burroughs, Wellcome & Co., or B. W. & Co. as well?—As far as my recollection goes, until quite recently, I simply put tabloids.

2919. Have you made some change in your general practice since then; I mean, now do you add initials?—Well, for a short time I have, since I heard there was some dispute as to what they were.

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2920. But up to that time you had no doubt yourself what they were?—No, I only associated tabloids with Burroughs, Wellcome & Co.

2921. And you did not suppose anybody else would mistake?—No, never for a moment.

2922. Until quite recently you found for your purposes "tabloid" quite enough?—Yes.

2923. When you prescribed "tabloid" were the dispensers at liberty to supply the drugs of any maker, or were they bound to supply the drugs of Burroughs, Wellcome & Co., according to your order?—I never suspected they would supply anything else.

2924. But Burroughs, Wellcome & Co.'s?—No.

2925. Can you tell me as to whether in your opinion the meaning in the profession of "tabloid" is the manufacture of Burroughs, Wellcome & Co.?—I should say so now. I have never thought of the matter.

2926. As far as your experience goes, have you any reason to doubt that your view is that of other members of the profession that you come across in Manchester?—As far as I know, yes.

Cross-examined by Mr. WALTER.

2927. I understand that you add now, frequently, "B. & W."?—I have done for the last few months.

2928. Have you heard the public say they would like to have their medicine in tabloid form?—They would never ask me that question.

2929. You have never heard that particular question asked?—No.

2930. I gather you have never troubled yourself, really, what "tabloid" was?—No, I have never thought about it until quite recently.

2931. As the result of your thought recently, what conclusion have you arrived at as to the meaning of "tabloid"?—Simply a compressed drug.

2932. That is all?—That is all.

2933. Form is nothing—the form of the tabloid has no feature? Assume I am a patient, and I come to you, and I say: "I should like the medicine in tabloid form," what do you suppose I mean by "tabloid form"?—I should not discuss it with you at all.

2934. I did not ask you whether you would discuss it with me, I said: what should you think I meant?—I should think you meant that you wanted some Burroughs & Wellcome's tabloids.

2935. What is "tabloid form"? What do I mean by "tabloid form"?—I do not know what you mean.

2936. You do not know?—No.

2937. It conveys no meaning to your mind?—"Tabloid" would convey to my mind——

2938. "Burroughs & Wellcome"—we understand?—A drug like *this*.

2939. Now you have got it in your hand, it would convey that form?—Yes, to me.

2940. That general form is what you mean?—Yes.

2941. Something compressed, something small, something handy to swallow ?—Yes, something of that kind.

2942. So that there is a sort of visionary idea floating about somewhere in your mind, apart from Burroughs & Wellcome ?—No, not in my mind.

2943. The idea only becomes embodied when "Burroughs & Wellcome" is added ?—Simply because I have only understood drugs of this kind to be produced by Burroughs & Wellcome.

2944. But that is not a Burroughs & Wellcome article you have in your hand ?—I do not know whether it is or not, but this is my idea of a tabloid.

2945. It is something of that shape ?—Yes.

2946. Tablets I suppose you know ?—I never heard of the word before I came into Court to-day.

2947. Never heard the word before ?—Never heard it in my life in association with medicines. I have heard of tablets of soap.

2948. You never heard of tablets ?—No, never in my life.

2949. Of course you never heard of Wyeth's preparations ?—No.

2950. Perhaps Allen & Hanbury's ?—Yes, I know their firm; I do not know anything about their drugs.

2951. You have, of course, a list of Burroughs & Wellcome's by you ?—No, I have not.

2952. Surely ?—I got one yesterday for the first time in my life.

2953. When you order a tabloid, do you not know what it is ?—They have almost every drug in tabloid form.

2954. But surely you would know the composition ?—I write the prescription.

2955. I agree you write the prescription, but you do not know that Burroughs & Wellcome keep it according to the prescription ?—Yes, I do.

2956. How ?—I could not tell you how. I only order a very few drugs; and I know that Burroughs & Wellcome have always their tabloids of those drugs.

2957. Then you do know; it has become——?—It has become a habit for years.

2958. You know that certain tabloids are of a certain composition ?—Yes.

2959. I wonder how you have learnt that ?—I have got into the habit of ordering tabloids for almost any of the few drugs I am in the habit of ordering. When I have ordered tabloids I have just put down a tabloid for any form of mercury, say, which is the principal drug I am in the habit of using. Occasionally chemists have sent word that tabloids of that form and in that strength they do not keep and they are not made, but they have tabloids containing half the quantity or double the quantity.

2960. So the prescription is altered to "take two"?—Two instead of one.

2961. You say you have never been asked by the public for medicine in tabloid form ?—When patients come to us they do not suggest what medicines they are to be given or how they are to have it.

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2962. They often do to lawyers, but I do not suppose they do to doctors; you have never come across patients who know very much better than you do what is the matter with them?—I have not.

2963. You cannot tell us that. You never heard it at all?—What? A

2964. A patient saying that he would like his medicine in a tabloid form?—No, I cannot say that I have.

2965. They do not trouble much in Manchester?—They do not with me; they never suggest to me what they would like.

Re-examined by Mr. NEVILLE. B

2966. Have you known the tabloids supplied by Burroughs, Wellcome & Co. for a good many years?—Yes.

2967. Has the word "tabloid" always been associated in your mind with the articles that they supply?—Yes.

2968. Are those articles mainly something of the shape that you see before you?—Yes. I very rarely see them, but that is the idea in my mind. C

2969. That is the idea that you have in your mind of the compressed drugs supplied by Burroughs & Wellcome?—Yes.

Dr. E. Treves.

Dr. EDWARD TREVES, sworn. D

Examined by Mr. LEVETT.

Mr. Justice BYRNE: These are coming off the 19, I suppose, Mr. Neville?

Mr. NEVILLE: Yes, my Lord; these are an honest selection.

2970. Mr. LEVETT: You are a member of the Royal College of Surgeons, and you live at 2, The Drive, Hove, Brighton?—Yes. E

2971. You have been in practice 22 years?—Yes.

2972. You are a general practitioner?—Yes.

2973. How long have you known Burroughs & Wellcome's products?—Ever since they were introduced, I believe. F

2974. Do you remember them about 1884 and 1885?—About 20 years ago, I imagine.

2975. What do you know them as—under what name?—"Tabloids."

2976. Did you know the word "tabloid" at all before it came up in connection with Burroughs & Wellcome's goods?—No. G

2977. Have you never heard the word "tabloid" applied to the drugs manufactured by anyone else?—No.

2978. What meaning does the word "tabloid" convey to your mind?—It has no meaning.

2979. As far as you know, in the profession what meaning do they give to the word "tabloid"?—The word "tabloid" has no meaning. H

2980. What meaning does the profession give to the word "tabloid"

itself?—They understand it to mean the compressed drugs of Messrs. Burroughs, Wellcome & Co.

2981. In your prescriptions have you used the word "tabloid"? —Yes.

A 2982. When you prescribe "tabloid" what do you expect your patient will get?—The products of Burroughs, Wellcome & Co.

2983. Do you as a matter of fact use it alone, or do you put "B. W. & Co.," or "B. & W.," or anything of the sort?—I do both.

2984. What is the rule, and what is the exception?—I think as a B rule I do not use the letters "B. W. & Co."

2985. Can you tell my Lord why in some cases you use them? In what cases do you use them?—I have no choice; I do not think about the matter—simply as it occurs to me, I put it or not.

Cross-examined by Mr. Walter.

C 2986. To you tabloid has no meaning?—No, the word has no meaning.

2987. You prescribe it?—Yes, I do.

2988. What do you intend them to get?—The product of Messrs. Burroughs, Wellcome & Co.

D 2989. You are quite unconscious whether they are going to get liquid or solids?—It is solids always.

2990. You do not know it means a solid?—Yes, I do.

2991. Any idea whether it is a powder or what sort of form?—It is a compressed shape.

E 2992. We have got as far as that. You know it is a compressed solid. Any idea of the shape?—No.

2993. You have no notion?—I have no notion.

2994. What is that in front of you?—That looks to be a tabloid.

2995. It is not, of course. Why do you say it looks to you like a F tabloid?—They are in different shapes.

2996. Is not that the shape which is always associated in your mind with the term tabloid?—No.

2997. Is not that one of the shapes which is associated in your mind with the word tabloid?—Yes.

G 2998. Do you know any tabloid that is not approximately of that shape?—The name of the drug do you mean?

2999. Any tabloid which is not approximately of that shape?—No, I know of none.

3000. Do not you think that you have some idea of what the meaning H of the word tabloid is. We have got it that it is very definitely in your mind that it is a solid, but it is a compressed solid, and you have never known of any other shape but that on the desk before you?—Excuse me I did not say none other. That is one of the shapes.

3001. I asked you whether you knew any other shape that I substantially differed from it?—Some are flatter, I believe, if you compare them, but as a matter of fact I have no personal knowledge of the absolute shapes of these drugs.

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3002. Do your patients ever say they would like their medicine in tabloid form ?—I really cannot say. They may say they prefer it in pills, but I really have no recollection.

3003. You have no recollection about it, and it is a mere inspiration of the moment whether you put on B. & W. ?—It is. A

3004. You have, of course, Burroughs & Wellcome's lists ?—Yes.

3005. Do you order from those lists ?—If I am in doubt I look it up to see whether they do make that special tabloid.

3007. Then do you write the prescription simply, or do you write what is the constitution of the medicine you want, or do you simply order it ?—I simply order tabloid so and so. B

3008. Really you have no rule at all about B. & W. whether you do it or not ?—No, I have not.

Mr. R. Harrison.

Mr. REGINALD HARRISON, sworn.

Examined by Mr. LEVETT. C

3009. Are you a Fellow of the Royal College of Surgeons and is your present address 6, Lower Berkeley Street, Portman Square, London ?—Yes.

3010. Did you practise for many years in Liverpool ?—I did. D

3011. About how many years ?—About 20 years—rather over, I think.

3012. How long is it since you left Liverpool ?—I left Liverpool just 14 years ago.

3013. When you were at Liverpool were you acquainted with the compressed drugs of Burroughs, Wellcome & Co. ?—Yes. E

3014. Did you know "tabloid" then. Did you know in Liverpool "tabloids" as a name used in the drug market ?—Yes, I knew it in connection with Burroughs & Wellcome.

3015. I was going to ask you that. To your mind what did "tabloid" mean ?—It meant a form of compressed goods, which was a very convenient form for use. F

3016. By any particular maker ?—Burroughs, Wellcome & Co.

3017. According to your impression, was that the view obtaining in the profession in Liverpool at that time ?—To the best of my belief, it was. G

3018. You have known these drugs ever since, of course ?—Yes, I have been acquainted with them.

3019. Have you ever known the word in connection with the drugs of any other maker except Burroughs, Wellcome & Co. ?—I have not. H

Cross-examined by Mr. WALTER.

3020. It is associated in your mind with a very convenient form for use ?—It is.

3021. May I take it that the word suggested the meaning ?—I do not

know exactly what the word means except in connection with Burroughs & Wellcome's products.

3022. It never suggested "like a little tablet"?—A compressed tablet or lozenge, or something of that kind.

A 3023. Yes, a compressed tablet?—A compressed drug.

3024. A compressed tablet?—A drug compressed into the form of a tablet, I should say—tabloid.

3025. The word is a general word in use now, surely?—I never use it in a general sense. I have always associated it with the person who

B first brought it under my notice, and I have continued to do so. I do not know anything more about the matter.

3026. You do not hear the word used by your patients at all?—No, I do not think so. I do not think they ever asked me to put in in a particular form. They generally leave it to my own discretion.

C 3027. You know what the form is they would get if they wanted a tabloid form?—If they asked me to give them a tabloid I should at once associate it with Burroughs & Wellcome.

3028. But what about "tabloid form"?—I do not draw a distinction.

3029. You do not draw a distinction?—No, I think not.

D 3030. Not between "tabloid" and "tabloid form." What are "tabloids"?—A form of compressed drugs known as those produced by Burroughs, Wellcome & Co. That is all I can tell you.

3031. Beyond that?—I do not profess to know.

3032. You have not seen it in general literature?—No, I have not.

E 3033. You have not noticed it, at all events, in "Punch"?—No, I have not.

3034. "Knowledge tabloid" and "tabloid opera" and all that sort of thing?—No, I am not aware that I ever saw it.

3035. What would you understand if anybody said to you they would

F like knowledge in tabloid form? It would convey a very definite idea to your mind, would it not?—It would convey a very definite idea of what Burroughs, Wellcome & Co. showed me.

3036. You really think that knowledge in tabloid form would call up a vision of Burroughs, Wellcome & Co.?—As really the first person to

G put the name into my head, I can only tell you that.

3037. Would you look up the list and see whether that was to be found in theirs. Do not you think it would have a very definite idea in your head—"knowledge in tabloid form"?—"Knowledge in tabloid form?"

H 3038. Yes?—I do not quite understand.

3039. Or, taking your meals in tabloid form?—No, I do not think it would.

Mr. Justice BYRNE: Mr. Neville, were the prescriptions that were taken to the Defendant's shop real prescriptions of doctors?

I Mr. NEVILLE: I do not think so, my Lord. I will see about that.

Mr. Justice BYRNE: Because I have not heard the gentleman who prepared them, and something Mr. Walter let fall gave warning of the kind of case he is going to make out. I thought I ought to call it to

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your attention because you might pass over the doctor who actually wrote them.

Mr. NEVILLE: I do not think that is so.

Mr. Justice BYRNE: What I meant was perhaps you did not catch it. Mr. Walter said at an early stage that their copy in their books had not got "B. & W." I thought it right to call your attention to that.

Mr. NEVILLE: I am much obliged to your Lordship, I will not forget it.

Mr. D. F. Smith.

Mr. DAVID FREDERICK SMITH, sworn.

Examined by Mr. NEVILLE.

3040. Do you carry on business as a wholesale druggists' sundriesman at 2, Winsley Street, Oxford Street?—Yes, as a member of the firm of John Sanger & Sons.

3041. You are wholesale druggists and sundriesmen?—We are.

3042. Have you been with the firm for 38 years?—I have.

3043. Have you known for some years past in the drug market drugs sold under the name of tabloids?—Ever since their introduction by Burroughs & Wellcome.

3044. Since their introduction you have known of them—for about 18 years?—Since their introduction—19 or 20 years.

3045. To your mind what does tabloid mean in the drug market?—Drugs compressed by Burroughes, Wellcome & Co.

3046. Is that the common knowledge of the trade in your opinion?—So far as I am aware.

3047. So far as you have come across it in all your experience. I was just going to ask one question. You get orders from chemists?—We do—a very large number every day.

3048. Amongst others, of course, for Burroughs, Wellcome & Co.'s goods?—Yes.

3049. In what form do those orders come to you? First of all I will ask you this: Do you habitually go through the orders received by the firm?—Personally?

3050. Yes?—No.

3051. Have you had the orders that arrived at your place of business yesterday searched?—I have.

3052. With a view of seeing the form in which orders for Burroughs & Wellcome's goods come?—I have.

3053. Have you found a considerable number of orders for tabloids?—Simply the word tabloid without any name or initial—a very large number.

3054. And some for?—Some for "tabs cascara" or "tabs antipyrin" B. & W.

3055. Sometimes with B. & W.?—Sometimes in one form and sometimes in another.

3056. Sometimes with a reference to the firm by name or initials?—That is so.

3057. And some without reference to the name but "tabloids"?—A very large number with the word tabloid only.

3058. If you can put it in that way, were the greater number of orders for tabloids simply, or were more for tabs or tabloids with the initials or A name of the firm. Could you give me the proportion between the two?—I could not give the proportion.

3059. At all events a large number were "tabloid" only?—Tabloid only.

Cross-examined by Mr. WALTER.

B 3060. And you had several orders for tabs.?—Tabs. B. & W. —yes.

3061. Simply "tabs."—that is common?—That is an abbreviation of the word tabloid, as we understand it.

3062. It is an equally good abbreviation of tablets?—Not if it is C B. & W. I should understand nothing else but tabloids.

3063. Do you ever get orders for "tablets B. & W."?—I have never seen one that I am aware of. We get orders for tablets.

3064. You get orders for tablets?—For tablets of other firms, or tabella or pellets, but not for B. & W. tablets.

D 3065. You are wholesale only?—Wholesale only.

3066. And your business is with the retail chemist?—With the retail chemist, yes—entirely with the retail chemist.

Re-examined by Mr. NEVILLE.

3067. I have your price list. Perhaps you will first identify it as you E have brought it here. Is that it. (Handed)?—That is so.

(List put in and marked D.F.S. 1.)

Mr. WALTER: May I ask a question on that?

3068. And revised by Burroughs & Wellcome?—We send the proofs to them to examine in order to have the names and descriptions correct. F It is as much to our interest to send the proof to them as to the trade generally.

Mr. THOMAS HARRIS CRUSE, sworn.

Examined by Mr. LEVETT.

3069. I think you are a Pharmaceutical Chemist, and you carry on G business at 63, Palmerston Road, Southsea?—Quite so.

3070. I think you have been in business there for 30 years?—30 years in the same house.

3071. How long have you known the word "tabloid" in connection with drugs?—I should think some 18 or 19 years.

H 3072. In what connection did you first know it?—With the preparations of Messrs. Burroughs, Wellcome & Co.

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3073. Before that time had you ever heard the word?—Not "tabloids." I had heard of tablets, and sold tablets frequently—Brockedon's compressed soda and potash.

3074. You had heard tablet?—Tablet, but never the word "tabloid."

3075. What meaning has the word "tabloid" in the drug trade?—I should say it simply means compressed drugs or medicinal preparations prepared by Burroughs, Wellcome & Co

3076. Have you ever known the word "tabloid" applied to the manufactures of any firm other than Burroughs, Wellcome & Co.?—Never in my experience.

3077. If you get a prescription—you make up prescriptions, do not you?—A great number, some thousands in the course of the year.

3078. If you get a prescription with "tabloid" prescribed, what do you give the patient?—Burroughs & Wellcome's, certainly—nothing but Burroughs & Wellcome's.

3079. Do you find in the prescriptions you get they use the word "tabloid" alone?—Most frequently.

3080. Or do they put "B. W. & Co."?—Most frequently tabloid, but occasionally—more particularly in the last few years—they have been prescribed "B. W. & Co."—more frequently within the last few years, but formerly the word "tabloid" was almost universal.

3081. Do you sell across the counter at all?—Oh, yes.

3082. Tell me what do the public mean when they talk about tabloids?——

3083. Mr. WALTER: How can he say that?—They mean Burroughs & Wellcome's without any doubt, as far as my experience goes.

Cross-examined by Mr. WALTER.

3084. The last few years it has become the practice of doctors to put "B. & W." also?—Not the universal practice.

3085. But it is more frequent?—It occurs more frequently.

3086. Tablets you have known?—Tablets I have known previously.

3087. Do you get written orders sometimes from customers for tabloids?—Yes.

3088. Do you keep proprietory articles other than Burroughs, Wellcome & Co.'s?—We keep a few, certainly.

3089. And patent medicines?—And patent medicines.

3090. Have you had instances of orders for tabloids which were not Burroughs, Wellcome & Co.'s goods?—Never.

3091. Never had such a thing?—No.

3092. Never at any time?—Not to my knowledge—a single instance.

3093. In tabloid form?—Tabloid form to my mind does not particularise one particular firm, but a compressed drug or preparation introduced and manufactured by Burroughs, Wellcome & Co., in any form they like, so long as it is compressed, it does not indicate any special shape or size to my mind.

3094. You see that little thing in front of you?—Yes.

3095. Have you ever known them differ substantially from that ?—Yes, in shape and size.

3096. You have known them differ substantially ?—Yes, this is evidently sugar-coated.

A 3097. You receive the trade literature, I suppose ?—Yes, but I do not read all, it goes into the waste paper basket, a great part of it.

3098. But from time to time you do sometimes read it ?—Naturally we have to keep up to date.

3099. And you know it is their trade mark ?—Yes, but before I was B aware it was a trade mark I always looked upon "tabloid" as indicating their products.

3100. It calls no association to your mind ?—Except the compressed form of medicament prepared by Burroughs, Wellcome & Co. I never had any other idea.

C 3101. It is so woven in your brain with B. W. & Co. that it has no meaning apart from that ?—Certainly not the word "tabloid." If you ask me about tablets there are any number of tablets, but to my mind "tabloid" indicates a particular manufacture.

3102. "Tabloid" and "tablet" have nothing in common ?—They D are very much alike; but it does not follow that tablets are tabloids. A tabloid must be a tablet.

3103. A tabloid must be a tablet, but a tablet need not be a tabloid ?—That is according to my way of thinking.

Mr. THOMAS TYRER, sworn.

E Examined by Mr. Neville.

3104. Are you the owner of the Stirling Chemical Works at Stratford, E. ?—I am the managing director of that firm.

3105. You are a Fellow of the Institute of Chemistry, a Fellow of the Chemical Society, and I see you have other positions in connection F with chemistry ?—Yes.

3106. Your Company manufactures chemicals ?—It does.

3107. Have you been acquainted with the chemical trade and drug trade for a good many years ?—Yes, for about 40 years.

3108. I suppose in the course of your business you get an extensive G acquaintance with the articles upon the market in that particular trade ?—Yes.

3109. Have you known the name "tabloid" in that drug market ?—Yes, for many years– 18 or 19 years.

3110. Your Company has nothing to do with the manufacture of H them, I suppose ?—Not the slightest.

3111. You manufacture other drugs ?—Yes.

3112. But your Company are on the drug market ?—Yes.

3113. They sell drugs to merchants ?—Yes.

3114. In your view what is the meaning of "tabloid" in the drug

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Mr. T. Tyler.

market ?—It is a word used entirely and solely in association with products of Burroughs, Wellcome & Co.

3115. Have you ever heard it associated with the make of any other people except Burroughs, Wellcome & Co. ?—Not to my knowledge.

Cross-examined by Mr. WALTER.

3116. Your association, I suppose, is in connection with the literature of the trade ?—To some extent ; but chiefly with the manufacture of the materials of which compressed drugs and medicines are made generally.

3117. I see ; you supply Burroughs, Wellcome & Co. ?—We supply Burroughs, Wellcome & Co., and many others.

3118. There is no reciprocity ; you do not buy the drugs back again? —I do not.

3119. Of course you receive the literature of Messrs. Burroughs, Wellcome & Co. ?—I read it in the ordinary way in the trade journals but not specially.

3120. But beyond the fact that you supply Burroughs, Wellcome & Co. with goods and they compress them, and you see their advertisements, that is about all the information you can give us ?—Except when for my own self I go into a pharmacy and ask for tabloids I should expect to be given—as for instance with a sore throat—Burroughs, Wellcome & Co.'s preparations.

3121. You would naturally like your own chemicals ?—I would like my own chemicals, certainly.

3122. You know your own chemicals are good ?—Yes.

3123. You know those are the chemicals in them ?—Except that I do not happen to supply the particular chemical to which I referred.

3124. Chlorate of potash ?—No.

3125. Still there is a kind of friendly feeling about the thing ?—Undoubtedly.

Re-examined by Mr. NEVILLE.

3126. If you ask for tabloids do you expect to get your materials ?—Certainly.

Mr. W. J. Carr.

Mr. WILLIAM JAMES CARR, sworn.

Examined by Mr. LEVETT.

3127. You are the manager of the retail department of Messrs. Benetfink ?—The photographic department. We have many departments.

3128. At 107, Cheapside ?—Yes.

3129. How long have you been manager of that department ?—Just on 10 years.

3130. Have any of Burroughs, Wellcome & Co.'s products come under your notice as manager ?—Yes, a considerable number.

3131. Under what name ?—Tabloids.

3132. When did the tabloids first come before you as photographic manager ?—About five years ago.

3133. Do you sometimes get orders for tabloid goods for photography ?
A —Burroughs, Wellcome & Co.'s. We get orders for tabloid goods without mentioning Burroughs, Wellcome & Co.

3134. How are they ordered ?—Tabloids—tabloid developers.

3135. When you get an order for tabloids or tabloid developers, what do you supply ?—Burroughs, Wellcome & Co.'s only.

B 3136. Have you know the word "tabloid" applied to the goods of any other firm ?—No, I have not.

3137. As far as you know in the trade in photographic materials, has "tabloid" got any meaning ?—No other meaning than that it is Burroughs, Wellcome & Co.'s advertised proprietory article.

C Cross-examined by Mr. Walter.

3138. What sort of shape are they put up in ?—A shape like *this*. (Indicating.)

3139. That is compressed, of course ?—Yes.

3140. The right dose for a plate ?—Yes, so many grains.

D 3141. I do not think Messrs. Benetfink are chemists and druggists in the ordinary way ?—No. Photographic chemicals are the only ones we sell.

3142. The compressed drug made up in the right quantity to suit the particular bath ?—Yes, to suit the particular formula.

E 3143. The public buy that ?—Yes.

3144. They order them as tabloids ?—Yes.

3145. Do you advertise tabloids ? In our catalogue, "Tabloid Brand."

3146. You do not call the articles "tabloids" ?—"Tabloid brand"
F is the way we describe them—Burroughs, Wellcome & Co.'s.

3147. Do you have orders for "tabloid brand" or orders for "tabloids" ?—They order both "tabloid brand" and "tabloid."

3148. For which do you suppose the majority of the orders are ?—Tabloids.

G 3149. The public like that shape ?—And that particular kind.

3150. It is a "We press the drug, and you do the rest" kind of business ?—It saves them the bother of weighing up so many grains. It is the only tabloid I know that is weighed up in so many grains.

Re-examined by Mr. Neville.

H 3151. Just look at this. You see that they are all of a shape something like that little thing in front of you. *That* is one form in which you get your photographic tabloids, is not it. (Handed to Witness) ?—Yes.

3152. Do you keep those ?—No, we do not sell those.

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Mr. W. J. Carr.

3153. Very well, then, you have not seen those?—We do not sell those.

3154. Do you ever, in response to an order for tabloids, supply anything but Burroughs, Wellcome & Co.'s goods?—Never.

3155. And you consider yourselves bound so to do?—Certainly. Whenever our customers ask for tabloids we think they mean Burroughs, Wellcome & Co.'s, and never think of supplying anybody else's.

Mr. J. M. Richards.

Mr. JOHN MORGAN RICHARDS, sworn.

Examined by Mr. NEVILLE.

46/

3156. You are in business at ~~47~~ Holborn Viaduct, London?—Yes.

3157. Are you a manufacturer of proprietary medicines?—I am.

3158. And have you been so in London for 36 years?—Exactly.

3159. Have you an extensive knowledge of the trade in proprietary medicines, both your own and those of other people?—I think so.

3160. Do you know "tabloid" in the drug market"?—Yes.

3161. What, in your opinion, does "tabloid" mean in the drug market?—Of course it is associated with the products of Burroughs, Wellcome & Co.

3162. Exclusively?—Exclusively.

3163. Have you ever heard it used in reference to, or in connection with, the products of any other manufacturer?—No.

3164. And, so far as you know, is that the universally accepted meaning in the trade?—It is.

Cross-examined by Mr. WALTER.

3165. You are a manufacturer?—I am.

3166. And wholesale, I suppose, only?—That is so.

3167. You do not deal with the public at all?—Not at all.

3168. Entirely with the retail trade?—The retail trade and with medical men.

3169. Do you supply Messrs. Burroughs, Wellcome & Co. with any of your goods?—I do not supply any of their goods, no.

3170. No, do you supply them with any of your goods?—No.

3171. What is your association with the term "tabloid"?—I have no association with "tabloid," but I am a manufacturer of tablets.

3172. Oh, you make tablets?—I do.

3173. Which are, I suppose, compressed drugs?—Yes.

3174. In a small convenient form?—Yes.

3175. Are they rather like that on the table?—Yes.

3176. Then your knowledge, may I take it, of "tabloid" is only from literature?—Not only that, but of course a form of drug so generally known is bound to come under my knowledge.

3177. Do you see Messrs. Burroughs, Wellcome & Co.'s price lists ?—Yes, I have seen them occasionally.

3178. And, of course, you see their advertisements ?—I do.

3179. And you have known that "tabloid" has been their trade mark ?—I do. I regard it as their exclusive property.

3180. You have known it as their trade mark ?—It is.

3181. And that is all you really know about it ?—That is so.

Mr. SYDNEY ROGERS, sworn.

Examined by Mr. LEVETT.

3182. You are a chemist and druggist, and you carry on business at 28, Osborne Road, Southsea ?—Yes.

3183. You have been in business there 19 years ?—Yes.

3184. Before that you were in the trade, but not for yourself ?—Not for myself.

3185. Do you remember the word "tabloid" coming into use about 19 years ago ?—About 19 years.

3186. In what connection did it come before you ?—As the compressed product of Messrs. Burroughs, Wellcome & Co.

3187. Had you heard the word before that time ?—Never.

3188. Have you ever heard the word applied to the goods of any other maker except Burroughs, Wellcome & Co. ?—Never.

3189. Can you tell me what meaning the word has in the drug trade ?—The word "tabloid" ?

3190. Yes ?—Undoubtedly the compressed products, the compressed goods, of Messrs. Burroughs, Wellcome & Co.

3191. I believe you make up prescriptions, do not you ?—Yes.

3192. Sometimes tabloids are prescribed. Do you find, as a rule, "tabloids" alone, or with the letters "B. W. & Co." ?—I have them written both ways, sometimes with the name, sometimes without.

3193. Which oftener ?—Oh, I think without.

3194. When you get a prescription simply "tabloid" without any letters, what do you supply ?—Burroughs, Wellcome & Co. invariably.

Cross-examined by Mr. WALTER.

3195. You have known it as the trade mark, of course ?—Yes.

3196. Do you get literature of this kind frequently. (Slip handed to Witness) ?—Yes, I have seen it before.

3197. Just hand it to my Lord. The pains and penalties of the law are ushered in by a quotation from Carlyle, I think, and all and several are hereby enjoined to observe the trade mark of Messrs. Burroughs, Wellcome & Co., or everybody will suffer. That is about a summary of the document, is not it ?—Well, yes, it may be.

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Mr. S. Rogers.

3198. That is an effusion which is quite common with Messrs. Burroughs & Wellcome ?—I do not think so.

3199. You have had several ?—I have seen that, yes.

3200. Have you had several prescriptions with "B. & W." on ?—Yes.

3201. Have you had the misfortune ever to get orders for tabloids other than those supplied by Messrs. Burroughs & Wellcome ?—No, I do not think I ever have.

3202. You have never been placed in that unfortunate position ?—No.

3203. And have never been asked for them either ?—Other than Burroughs & Wellcome ?

3204. Yes ?—No ; whenever I am asked for "tabloids" I always supply theirs.

3205. You have never been asked for a thing which Messrs. Burroughs & Wellcome did not supply ?—No, I do not think I have.

3206. You never had that difficulty ?—No.

3207. You have never been written to by any of your customers, I suppose, for similar goods ? Have you got any tablets of your own ?—No, I do not put up any ; I do not keep any, as a matter of fact, except Burroughs & Wellcome's tabloids.

3208. You do not keep any compressed medicines at all ?—No.

3209. Do you deal in any proprietary articles—patent articles ?—Yes, a few.

3210. Are any of those put up in tablet form ?—Yes, I have some tablets.

3211. You have never been asked for any of them as "tabloids," I suppose ?—No, never.

3212. No recollection of it ?—No recollection.

3213. So you never have had to consider the question as to what you ought to do ?—No, I have not.

Re-examined by Mr. Neville.

3214. Were you prevented from dispensing or serving other goods besides Burroughs, Wellcome & Co.'s goods under an order for "tabloid" by that notice ?—Prevented ?

3215. Yes. I mean is that what has resulted in your not giving out other goods than Burroughs & Wellcome's under an order for "tabloid"? —I take it that other firms have not supplied Burroughs & Wellcome's when they have been asked for them—that is the outcome of it, I take it.

3216. Before you had any warning from them at all, what goods were you in the habit of supplying in answer to an order for tabloids ?—Their own goods—Burroughs & Wellcome's—invariably.

3217. That warning made no difference in the way in which you conducted your trade ?—Not the slightest.

Mr. DAVID MORGAN, sworn.

Examined by Mr. NEVILLE.

3218. Your address is 293, Pentonville Road, King's Cross, and 25, Brecknock Road, London ?—Yes, that is right.

A 3219. Are you a pharmaceutical chemist ?—Yes.

3220. Have you been in business for 27 years ?—At King's Cross.

3221. At that particular address ?—Yes.

3222. I daresay you have had a longer acquaintance than that with the trade generally ?—Yes, I have been in business for 39 years.

B 3223. Do you know "tabloids" in the drug market ?—Yes.

3224. What meaning has "tabloid" to your mind ?—The products prepared by Messrs. Burroughs & Wellcome.

3225. In your opinion, is that the general meaning attributed to that word in the trade ?—Yes, that is the only meaning I know.

C 3226. Do you get prescriptions to make up in which tabloids are included ?—Yes, often.

3227. Under the name "tabloid" ?—Yes.

3228. Have you ever known a mistake in prescriptions submitted to you, that is to say have you ever known orders by the doctors for tabloids D except such as are made by Burroughs, Wellcome & Co. ?—Yes.

3229. I will just put my question again. In your experience have mistakes arisen with regard to tabloids prescribed by doctors which you have dispensed. Let us try again. I have confused you rather. I will put it first this way. When you get "tabloid" prescribed, what goods do E you supply ?—Burroughs & Wellcome's.

3230. Have you ever had any difficulty in supplying those goods ?—Except when I have had prescriptions of tabloids for preparations which Burroughs & Wellcome do not make.

3231. That has happened ?—Yes, that has happened.

F 3232. How often ?—Not very often; very seldom.

3233. In that case what do you do ?—At once I refer to Messrs. Burroughs & Wellcome. If they do not make them of course I then tell the patient that I must have time, and I must communicate with the prescriber.

G 3234. You inform the patient that you cannot make the medicine up ?—Yes.

Cross-examined by Mr. WALTER.

3235. You have had cases in your experience in which the doctor has been foolish enough to put tabloids of goods that are not Burroughs & H Wellcome's, is that so ?—I think it is only one or two.

3236. Did you know what was intended ?—No, I did not.

3237. It was not a patent medicine ?—Well, it may have been so, really I cannot remember now.

3238. "Tabloid" was used instead of "tablet" ?—Yes.

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Mr. D. Morgan

3239. What course did you adopt ?—I refer to Messrs. Burroughs & Wellcome, try them, and when they do not make them of course I tell them I must communicate with the doctor.

3240. That has been your practice in all cases ?—That has been once, I know.

3241. If you know the drug—— ?—I did not know the drug; it was some new thing.

3242. That you did not know ?—That I did not know.

3243. "B. W." is frequently on the prescriptions, I suppose, that you receive ?—Sometimes.

3244. Or "B. & W." ?—Yes.

3245. Is there any definite idea, in your mind, with regard to "tabloid," apart from Burroughs & Wellcome? Does it convey any meaning, to your mind ?—No, only Burroughs & Wellcome's preparations.

3246. Nothing else ?—Nothing else; always as their trade mark.

3247. You would not understand what was "medicine in tabloid form" ?—No.

3248. It conveys no meaning to your mind ?—No.

Mr. A. S. Buck.

Mr. ANTHONY SMITH BUCK, sworn.

Examined by Mr. LEVETT.

3249. I think you are a chemist ?—Yes.

3250. And carry on business at 179, Bedford Street South, Liverpool ?—Yes.

3251. You have been in business there at that address for 12 years ?—Yes.

3252. How long before that had you been in the trade ?—Since 1874.

3253. When did you become acquainted with the word "tabloid" ?—I should think about 1884 or 1885.

3254. In what connection ?—In connection with dispensing of prescriptions, but certainly from Burroughs & Wellcome's preparations.

3255. Before that time had you heard the word "tabloid" at all ?—No, I had never heard it before that.

3256. Since that time have you heard the word "tabloid" applied to the products of any other firm ?—Not except Burroughs & Wellcome's—no.

3257. You make up prescriptions, do you not ?—Yes, our work is mostly prescription work.

3258. You get prescriptions with the word "tabloid" on sometimes ?—Yes.

3259. Are they sometimes "tabloid" and "B. W. & Co." ?—Yes, but seldom.

3260. Can you tell me which comes the oftener ?—"Tabloid" only.

3261. When you get a prescription with "tabloid" simply, what do you make up ?—Always Burroughs & Wellcome's.

3262. Can you tell me whether in the drug trade "tabloid" has any

well known meaning?—Always associated with the trade mark of Burroughs, Wellcome & Co.

Cross-examined by Mr. WALTER.

3263. Did I gather that you had always associated it with the trade mark of Messrs. Burroughs & Wellcome?—Yes.

3264. The knowledge that they have that trade mark is always before your notice?—It is universal; everybody seems to know it.

3265. You too, I suppose, are the recipient of much literature?—Yes, a good deal, but I do not read it very closely

3366. You occasionally look at it just to keep yourself up to date?—Yes.

3267. "Tabloid product" is of recent importation?—I cannot say when it was put in. I have noticed it recently, but I cannot say when it was first introduced.

3268. It is a very frequent thing to see "B. & W." on the prescriptiions?—Not so frequently as simply "tabloid." You see "tabloid" more frequently, because my prescriptions are very largely drawn from leading Liverpool men and they know what "tabloid" is.

3269. What sort of idea have you got of the word "tabloid"?—Do you mean of shape, or anything of that sort?

3270. Yes?—It may be anything from a pinhead up to a draughtsman, or something of that sort, in size.

3271. What shape is it?—They vary. Some are bevelled and some are, I suppose, almost concave and convex.

3272. "Tabloid" has a very defined meaning in your mind, I suppose?—Yes, as a Burroughs & Wellcome article.

3273. Apart from that no meaning at all?—No meaning at all, except it is a solid which occasionally may go liquid.

3274. Has "tablet" any defined meaning in your mind, I wonder?—Yes.

3275. What does "tablet" mean?—I should think a tablet might be anything from a small compressed thing like this, to a tablet of marble or anything else.

3276. I mean medicinally?—I fancy almost any compressed shape would be a tablet.

3277. "Tabloid" does not convey any such definite meaning to your mind?—Only in association with Burroughs, Wellcome & Co.

3278. We will assume Burroughs, Wellcome, but has it got any meaning in addition to Burroughs & Wellcome?—Simply that it is a compressed drug, and is prepared by Burroughs & Wellcome—that is all.

3278A. A convenient form to take?—At times, but some of them could not be taken as they are; they could not be swallowed. They have to be dissolved, such as the one of Epsom salts.

3279. They are so described to be dissolved, I suppose?—Yes.

3280. There are instructions given that they are to be dissolved?—Effervescent.

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Mr. A. S. Buck.

3281. Have you ever been faced with the difficulty of not quite knowing what was meant when you got an order for tabloids ?—No, I cannot say that I have.

3282. You have never had to consider the question at all ?—No.

3283. You have never had a drug which you knew perfectly well was a proprietary article, and was described as "tabloid" ?—No, I cannot remember a single case where it has occurred.

3284. Perhaps you do not deal with homœopathic medicines at all ?—Yes, I keep a fairly full line of homœopathic medicines.

3285. Any of them in a compressed form ?—No, except the pilules in the pill shape, I should say nothing flattened or anything of that sort, nothing but the round pill.

3286. Why do you say nothing flattened ? Has flattened anything to do with "tabloid" ?—A rounded thing I should call more a pill, and a flattened thing I should call a tablet, I think, if it were pressed down.

3287. Quite a trodden on pill ?—Pressed with the finger.

3288. That is a sort of general idea of tabloid, is it not ?—Not altogether.

3289. You think not ?—No.

3290. I suppose you have read so much literature you cannot get Burroughs, Wellcome out of your mind ?—I have read really very little of Burroughs & Wellcome's literature.

3291. Mr. Justice BYRNE: People say that the world is an oblate spheroid. Do you suggest now that they should call it a tabloid ?—It is rather a large dose, my Lord.

Mr. T. L. Reeve.

Mr. THOMAS LEWIS REEVE, sworn.

Examined by Mr. NEVILLE.

3292. Are you in business at Birmingham ?—Yes.

3293. Are you a pharmaceutical chemist and druggist ?—I am not a pharmaceutical chemist, I am a qualified chemist and druggist.

3294. Have you been at your present address for 28 years ?—Yes.

3295. Have you known the trade for 39 years ?—Yes.

3296. All that time in Birmingham, or only the 28 years in Birmingham ?—Only the 28 years.

3297. Do you know in the drug market tabloid as a name ?—Yes.

3298. What is the meaning to your mind of the word tabloid ?—It means the product of Messrs. Burroughs & Wellcome.

3299. Is that the common knowledge of the trade, in your opinion ?—Yes.

3300. Do you get prescriptions for "tabloid" ?—Yes, many.

3301. Do you get them sometimes without reference to "B. W. & Co." or "Burroughs, Wellcome & Co." ?—Yes, both ways.

3302. You get them both ways. Which can you say you get most often ?—I should say more often without the initials than with.

3303. In response to an order or a prescription for "tabloid" what goods do you supply?—Burroughs & Wellcome's goods.

3304. Invariably?—Always.

Cross-examined by Mr. WALTER.

A 3305. You told us that "tabloid" is the product of B. W. & Co. I have heard that word repeated by witness after witness. Where do you get it from—"the product of B. W. & Co."?—I do not know where I get it from. I do not know that it is associated with anything else.

3306. But why use the word product?—It is their production, I
B take it.

3307. Is it not a word that you find in nearly all their literature, lately—"tabloid product"?—Yes, I have seen it a good deal lately in their literature.

3308. Have you ever had to consider the question of the meaning of
C tabloid where you knew it did not apply to Burroughs & Wellcome's goods?—No, I have never had to consider it.

3309. Never had orders for goods described as tabloids which you knew were not Burroughs & Wellcome's?—No, I cannot recollect any.

3310. Not a single case?—No.

D 3311. Never had it either in prescriptions—you have never had "tabloids"?—Never had prescriptions with the word "tabloids" on but what has been associated with Burroughs & Wellcome's.

3312. Do you get prescriptions "T.A.B."?—No, I cannot recollect it.

3313. Never had a prescription with T.A.B.?—No, not to my
E recollection.

3314. I suppose you have taken the trouble to look through your books?—For this case, no.

3315. What idea has "tabloid," except connected with Burroughs, Wellcome & Co.? Has it anything to your mind?—No, nothing except
F associated with their drugs.

3316. It never occurred to you that it meant anything?—No.

3317. It does not occur to you that it means anything, probably?—No, I do not think there is any meaning to it more than that it is intended to apply to Burroughs & Wellcome's drugs.

G 3318. All drugs—liquid and everything?—No, only compressed drugs.

3319. But its shape is nothing. What is a tablet? Do you know a tablet?—Yes.

3320. Is there any connection between "tablets" and "tabloids"?
H —No, I do not think there is any connection between the two.

3321. None at all?—No.

3322. Not the same shape at all?—I will not say that. A similarity in shape, perhaps.

3323. It is practically the same thing. You sell tablets?—Yes.

I 3324. The same shape exactly as tabloids?—Very much the same shape, yes.

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Mr. T. L. Reeve.

3325. Tablet equally applies to Burroughs & Wellcome's goods, I suppose ?—No.

3326. You would not call that a tablet ?—No, I would call that a tabloid.

3327. It is not a tablet, I suppose ?—No, it is a tabloid. A

3328. It is a tabloid. What is a tabloid then ?—A compressed drug.

3329. Any particular form ?—Yes.

3330. It has a particular form ?—It is more of one form—different sizes—smaller and larger.

3331. That is right. Smaller or larger, but practically may I take it B of the shape of a tablet ?—Yes.

Re-examined by Mr. NEVILLE.

3332. I do not know what my learned friend handed to you, but I will put it to you, is there anything in the form that you see in front of you to convey to your mind a tabloid whether it is made by Burroughs, C Wellcome & Co. or not (you need not examine it closely because I will not tell you whether it is Burroughs & Wellcome's or is not) the question I ask you is this, according to your notion is anything of *that* shape a tabloid, whether it is made by Burroughs & Wellcome or whether it is not ?—I do not quite understand what you mean. D

3333. Let us try and make it plain to you. I do not quite understand the answer you gave to my learned friend. In your opinion does tabloid refer to the make of a particular maker or not ?—To a particular maker decidedly.

3334. In your view is anything properly called a tabloid which is not E made by the particular firm ?—No.

3335. There are other compressed medicines made in a shape very similar to that used by Burroughs, Wellcome & Co., are there not ?—Yes, there are.

3336. Is the word tabloid, in your opinion, properly applicable to F them ?—No ; exclusively to Burroughs & Wellcome's.

Mr. NEVILLE : I only wanted an explanation of that.

Mr. J. Fuerst.

Mr. JULES FUERST, sworn.

Examined by Mr. LEVETT.

3337. I think you are a member of the firm of Fuerst Bros. ?—Yes. G

3338. At 17, Philpot Lane, London ?—Yes.

3339. I think you have been in business as a chemical merchant for twenty years ?—Yes.

3340. How long have you been acquainted with the tabloid goods made by Burroughs & Wellcome ?—About ten or twelve years. H

3341. Before that time did you ever come across the word "tabloids"? —No.

3342. Since that time have you ever seen the word "tabloid" applied to goods of other makers?—No.

3343. Are you wholesale or retail?—Wholesale only.

3344. Do you get orders for "tabloid" goods?—From the photo-
A graphic trade, yes. We only touch the photographic trade for those goods.

3345. And when you get orders for "tabloid" goods, what goods do you supply?—Burroughs & Wellcome's.

3346. Any others?—Yes.

B 3347. Under those orders?—We get orders for developers in tablet form.

3348. In tablet form?—Yes.

3349. What do you supply then?—We supply them, yes; we do not supply Burroughs & Wellcome's goods in that case.

C 3350. I understand. When you get orders in tabloid form, what do you supply?—Burroughs & Wellcome's.

3351. When you get tablet form what do you supply?—Other manufacturers'.

3352. As far as you know in the chemical trade has "tabloid" any
D reference to the maker of the goods?—Oh, yes, it is a well known trade mark—"tabloid."

3353. The trade mark of whom?—Burroughs & Wellcome.

Cross-examined by Mr. Walter.

3354. You are in the wholesale chemical trade?—Yes.

E 3355. You have nothing to do with drugs?—Yes, we have. It is identical very often—chemicals and drugs.

3356. I gathered you did not deal in any of Messrs. Burroughs & Wellcome's ordinary goods, you only touched their photographic?—Yes, only their photographic.

F 3357. Do you get your orders for Burroughs & Wellcome's goods?—Yes, "tabloid."

3358. In connection with the words "Burroughs & Wellcome," or "B. W. & Co."?—Not necessarily.

3359. But do you?—We do, and we do not.

G 3360. You supply them to the trade, of course?—Yes.

3361. Only to the trade?—Only to the trade.

3362. There are tablets. Are there developers in tablet form?—Yes, certainly, in fact we first introduced photographic developers in tablet form. At that time Messrs. Burroughs and Wellcome were not in the
H market.

3363. What is the difference between tablet and tabloid form?—Everybody knows that the word "tabloid" is a trade mark. I do not know what difference there may be, I am sure.

3364. But tablets and tabloids—it is six of one and half dozen of
I the other, bar the trade mark, is not it?—That may be; it might not.

3365. In your view is a tabloid a tablet?—I do not think I can have

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Mr. J. Fuerst.

any view on the subject. I simply say that Messrs. Burroughs & Wellcome supply tablets in connection with their trade mark, and there are other tablets.

3366. They supply tablets in connection with their trade mark "tabloid"?—Yes, certainly, and there are other tablets.

3367. Other people supply tablets?—Exactly.

3368. But not in connection with that trade mark?—But they have no trade mark, certainly not.

Re-examined by Mr. LEVETT.

3369. And when the word "tabloid" is used what meaning does it have?—That you must supply Burroughs & Wellcome's.

3370. And anyone else's?—No, no other. There is no other meaning to that.

(Adjourned for a short time.)

Mr. J. F. Harrington.

Mr. JOHN FREDERICK HARRINGTON, sworn.

Examined by Mr. LEVETT.

3371. You are a chemist of 45, High Street, Kensington?—Yes.

3372. I think you have been in business there 17 years?—Yes.

3373. Before that you had been in business another 17 years?—Yes.

3374. When did you first hear of the word "tabloids"?—About 18 years ago.

3375. In connection with what did you hear of it?—With the compressed drugs of Burroughs, Wellcome & Co.

3376. Can you tell my Lord whether the trade attach any particular meaning to the tabloid goods or tabloids?—Only in connection with these compressed drugs of Burroughs, Wellcome & Co.

3377. Have you ever known any goods made by another firm called "tabloids"?—No.

3378. Do you make up prescriptions?—Yes.

3379. I suppose you get some prescriptions for tabloids—tabloid prescriptions?—Yes.

3380. Do you find you get "tabloids" alone ordered?—Yes, frequently.

3381. Or with the letters "B. W. & Co."?—Both, sometimes one, and sometimes the other.

3382. Can you tell, my Lord, which is the larger proportion?—No, I do not think I can—there is not much difference, I think.

3383. When you get a prescription for simply "tabloids," what do you supply?—Burroughs, Wellcome & Co.'s.

Cross-examined by Mr. WALTER.

3384. I did not gather where you carry on your business ?—Kensington High Street—No. 45.

3385. You, of course, have had the trade literature ?—Yes.

A 3386. You know it as their trade mark ?—Yes.

3387. Have you had any cases of orders or prescriptions for goods which you knew were not Messrs. Burroughs, Wellcome & Co.'s, under the term "tabloid" ?—No.

3388. You have never had any such case ?—No.

B 3389. You cannot tell us the proportion between orders with B. W. & Co. and without ?—No, I cannot tell you the proportion.

3390. Does "tabloid" convey any meaning to you apart from Burroughs, Wellcome & Co. ?—No, nothing.

3391. It conveys no meaning to you at all ?—Not beyond the prepara-

C tions of Burroughs, Wellcome. & Co.

3392. Do you understand the word "tablet" in medical form ?—Yes, there are tablets made by other makers.

3393. There is no association between "tablets" and "tabloids" ?—No, none whatever.

D 3394. None at all ? "Tabloids" is a meaningless word to you ?—Outside Burroughs. Wellcome & Co.'s preparations.

3395. Quite meaningless ?—Yes.

Re-examined by Mr. LEVETT.

3396. Do you think if the word "tabloid" had had any meaning

E outside Burroughs, Wellcome & Co.'s goods you would have heard of it ? —I think so.

Mr. GEORGE DAVISON, sworn.

Examined by Mr. NEVILLE.

3397. Are you the managing director of Kodak, Limited ?—Yes.

F 3398. How do you describe the business of Kodak, Limited ?—They are manufacturers of photographic materials and appliances.

3399. Cameras and all the rest of it ?—Exactly.

3400. Do you deal with the public ?—Yes.

3401. You manufacture and sell ?—Yes.

G 3402. Do you manufacture compressed chemicals for photographic purposes ?—We do.

3403. Have you known the products of Messrs. Burroughs, Wellcome & Co. in the photographic trade ?—Yes.

3404. For how long, about ?—Some years, certainly.

H 3405. Under what name have you known their goods in your trade —their compressed chemicals ?—As tabloids.

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3406. Is that name known as indicating Burroughs, Wellcome & Co.'s goods in the photographic trade ?—Certainly.

3407. What meaning do you attach to the word "tabloid" in your trade ?—A form of compressed developer manufactured by Burroughs, Wellcome & Co. A

3408. Have you ever known any other firm dealing in tabloids in your trade except Burroughs, Wellcome & Co. ?—Certainly not.

3409. You, I suppose, in connection with your Company have a very wide knowledge of the trade ?—Yes.

3410. If there had been any other product on the market except B Burroughs, Wellcome & Co. under that name I suppose it must have come to your attention ?—Undoubtedly.

3411. You see the price lists and so forth ?—Yes.

3412. What do the agents and servants of your Company supply in response to an order for tabloids ?—They would supply Messrs. Burroughs, C Wellcome & Co.'s products.

3413. Only ?—Only.

Cross-examined by Mr. Walter.

3414. Do they ?—I said they would.

3415. I thought so. You do not sell them ?—I am not prepared to D say we do not.

3416. But you are not prepared to say you do ?—I am not prepared to say we list them and sell them.

3417. I thought it very strange if Kodak, Limited, were supplying them. You are large manufacturers yourselves ?—Yes. E

3418. You are proprietors of the invented word "Kodak" ?—We are also wholesalers of other people's goods and retailers.

3419. But you are not prepared to tell us here that you sell or list the goods of Burroughs, Wellcome & Co. ?—No ; what I said was, "We should supply those." F

3420. It was the way you said it which made me ask the question. "Tabloid" you have known as their mark ?—Certainly.

3421. The trade mark of Burroughs, Wellcome & Co. ?—Yes.

3422. You have known that of course ?—Yes, I have known that.

3423. Beyond the fact that you know that, you have no personal G dealings with tabloid compressed drugs ?—Yes, I have bought them for my own use.

3424. What is the shape of a tabloid ?—Various shapes according to my knowledge of Messrs. Burroughs & Wellcome's products.

3425. Do you sell compressed drugs ?—Yes—compressed chemicals. H

3426. Chemicals ?—Yes.

3427. What do you call them ?—We have some called "lotols," for example.

3428. Do you call them compressed drugs ?—No, not compressed I drugs—compressed developers.

3429. Only developers, I suppose. Are there any others ?—Yes, there are developers ; that is all.

3430. Now just tell me: has tabloid got no meaning, to your mind? —Yes, certainly it has a meaning, to my mind. I have told you. The manufacturers——

3431. I mean apart from the manufacturers. Apart from the manu-
A facturers, has it got any meaning, to your mind?—I have told you that it means the compressed products of Messrs. Burroughs & Wellcome.

3432. I know. So you tell me; but I asked you whether, apart from Messrs. Burroughs & Wellcome. it has got any meaning, to your mind?—That is the meaning, as I have told you, that it conveys to my
B mind.

3433. And nothing else?—No, nothing else.

3434. Have you never considered the meaning of the word "tabloid"?—That is the only meaning it ever had to my mind.

3435. It does imply compression?—Yes, I think that is the only
C meaning I ever attached to it that it implies compression.

3436. "Kodak" of course was an invented word?—Yes.

3437. You also had "pelloid" at one time, had you not?—We never registered "pelloid."

3438. No, you dropped it and used "kodoid," did you not?—Yes,
D we use "kodoid."

3439. And you dropped "Pelloid"?—We gave up "Pelloid."

3440. And went to Kodoid"?—Exactly.

3441. "Pelloid" savoured too much of the skin, did it not?—No, that was not the reason we gave it up—certainly not.

E 3442. It was nothing to do with that?—No, nothing to do with that.

3443. I should like, as a matter of curiosity, to know why you gave it up?—We gave it up because someone else had the name.

3444. Someone else had "Pelloid"?—Yes, that was suggested to us
F by one of our people when we had used it for a short time—we are not in the habit of using the names of other people for our productions.

3445. No, I do not suggest that you are. You have got a very good name of your own?—Yes.

3446. "Kodak" was an absolutely meaningless name when it was
G first invented, was it not?—Certainly.

3447. It never could have had any meaning by any possibility?—Absolutely none. It was a purely invented word.

3448. Have you ever thought about "tabloid"? What does it mean? —I look on "tabloid" as an invented word.

H 3449. No, no, answer my question. Have you ever thought about what it does mean?—I have had to think about it, because you have asked me the question, and I say in answer that it is Messrs. Burroughs & Wellcome's product.

3450. Have you ever thought about it before I asked you the
I question?—Never—before it was used by them.

3451. Have you ever thought about it before I asked you the question, that is what I am putting to you?—Why, yes.

3452. Then what do you suppose the "oid" meant?—I think it is merely a good sounding word for advertising purposes.

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3453. And that is really all you can think it means ?—I am sure that that is all it means.

3454. The shape of the tabloid conveys no meaning to you at all ?—I cannot say that it does.

3455. Or the form of the tabloid—if you were told to take your food in tabloid form—it would convey no meaning to you ?—It would cover a large number of shapes if that is what you mean.

3456. Supposing I said to you, "Would you like your food in tabloid form," would you have any doubt about what I meant ?—I should think you were using a word——

3457. Never mind that—would it convey a definite meaning to your mind ?—Well, I should take it as meaning that I was to eat Messrs. Burroughs, Wellcome & Co 's products.

3458. Would you, really ? And nothing else ?—No, absolutely nothing else.

3459. And that is the impression that you desire to leave on our minds as being the impression it would have on yours ?—Yes. If you (knowing what I do) had used that expression to me I shoult take it that that was what you meant.

3460. I see. You cannot dissociate yourself from the idea of trade marks ?—I cannot do what ?

3461. You cannot get your mind away from trade marks ?—I do not see how it is possible to when I know it to be a trade mark.

Re-examined by Mr. Neville.

3462. Your acquaintance with Messrs. Burroughs & Wellcome's tabloids has always been in respect of compressed drugs and compressed chemicals, has it not ?—Yes.

3463. And you have never known the word "tabloid" used in connection with any other articles ?—Certainly not.

Mr. F. Guy.

Mr. FREDERICK GUY, sworn.

Examined by Mr. Levett.

3464. Do you carry on business as a chemist and druggist at 11, North Street, Brighton ?—Yes.

3465. Your firm is Glaisher & Kemp, is it not ?—That is so.

3466. How long have you carried on business there ?—For some years

3467. For how long ?—A good many years.

3468. I have got 30, is that correct ?—That is quite correct.

3469. Do you remember the word "tabloid" coming out ?—I do.

3470. That was about 20 years ago, was it not ?—That would be about it I should think.

3471. In what connection did you first hear the word "tabloid" ?—In connection with Messrs. Burroughs & Wellcome's products.

3472. Since that time have you ever heard the word "tabloid" applied to the goods of any other firm?—No, I have not.

3473. Can you tell my Lord what idea "tabloid" conveys in the drug trade?—A compressed product of Burroughs, Wellcome & Co.

A 3474. Do you make up prescriptions?—We do.

3475. Do you get "tabloid" on the prescriptions?—Yes.

3476. Do you get it alone, or sometimes with the letters "B.W. & Co."?—Yes, we do.

3477. Can you tell my Lord which comes oftener?—No, I cannot.

B 3478. Suppose you get "tabloid" alone, what goods do you supply?—We should supply Burroughs, Wellcome & Co.'s.

Cross-examined by Mr. Walter.

3479. You know, of course, it is their trade mark?—I do.

3480. You have had frequent reminders of it in fact?—Yes.

C 3481. From the literature which we have heard of, and seen in this case, supplied by Messrs. Burroughs, Wellcome & Co.?—Yes.

3482. Perhaps you have also seen the pink paper—the document that has the warning of divers pains and penalties for infringement of trade mark?—I have.

D 3483. Do you sell proprietary medicines?—Yes.

3484. Kilby, Pears, and others, I suppose?—Yes.

3485. And I suppose, like a good many druggists, you put them up in your own bottles?—Yes.

3486. Have you ever been asked for those as tablets?—I am not

E aware that we have.

3487. Will you deny that you have. Are you prepared to say that you have not?—(No answer.)

3488. Are you prepared to say you have not been asked for those as "tabloids"?—We have been asked for Kilby, Pears.

F 3489. You have been asked for Kilby, Pears, as "tabloids"?—No, tablets.

3490. Have you ever been asked for any of your "tabloids"?—No, we have not.

3491. Never been asked for any of them?—Not "tabloids."

G 3492. Have you ever had any written orders or prescriptions as to which you have had a doubt, or which you have known were not the goods of Burroughs, Wellcome & Co.?—No.

3493. Never had such a case?—No.

3494. I suppose you are simply speaking from your memory now;

H you have not looked up these things?—That is it.

3495. Simply memory?—As far as I know.

3496. As far as you can recollect. Have you ever been asked for any proprietary medicines under the term "tabloid"?—No, I am not aware of it.

I 3497. Does "tabloid" convey any meaning to your mind?—Yes, that it is the product of Burroughs, Wellcome & Co.

3498. Yes, I know. Apart from Messrs. Burroughs, Wellcome & Co.

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what is the meaning of "tabloid form"?—It means a compressed drug manufactured by Burroughs, Wellcome & Co.

3499. That is the form, and I asked you what was the meaning of "tabloid form"?—A compressed drug.

3500. Nothing else?—Manufactured by Burroughs, Wellcome & Co. A

3501. That is all that is associated in your mind with it?—That is all.

3502. Have you ever thought about it at all?—No.

3503. Never have thought about it?—No.

3504. Never have thought what was the meaning of "tabloid" at B all?—Except that it is associated with Burroughs, Wellcome & Co.

3505. A trade mark, and there you have left it. That is about it, is not it?—Associated as a product of Burroughs, Wellcome & Co.

3506. You put this word on me. Where do you get "product" from —their advertisements?—It is an article manufactured by Burroughs, C Wellcome & Co.

3507. Everybody comes here and talks about "product." Where did you get the word "product"? Where on earth did you get the word "product" from? Was not it out of their advertisements? Have not they recently taken to calling them tabloid products?—They have been D termed tabloid products for a long time.

3508. It is in their advertisements—very well.

Re-examined by Mr. LEVETT.

3509. You mentioned tabloids and tablets. In the trade are those two distinct things?—The word "tabloid" is associated with Burroughs & E Wellcome, undoubtedly.

3510. Is the word "tablet" associated with any firm at all?—Not any particular firm.

3511. Do different firms make different kinds of tablets?—Different firms make different tablets. F

3512. And they sell them as their particular tablets?—Yes.

3513. Do those firms sell them as their particular tabloids?—No.

Mr. NEVILLE: Now I will call Mr. Davies.

Mr. Justice BYRNE: Have you any more of this class?

Mr. NEVILLE: This is in answer to what your Lordship said about G the prescription.

Mr. Justice BYRNE: Have you any more of these chemists? I think we have had somewhere about enough of those now. It would not convey any greater impression to my mind if you called forty more to say the same thing. I do not want to put too great a pressure on you. H

Mr. NEVILLE: I do not want to presume too much on your Lordship's kindness in any way. At the same time, there is sometimes a difficulty.

Mr. Justice BYRNE: I will leave it to your discretion after what I have said. If you have 20 good witnesses who seem to give their I evidence honestly enough I do not think the effect is increased if one produces 20 more.

Mr. NEVILLE: Of course it is the wide extent of the reputation that one wants to get out.

Mr. Justice BYRNE: How many more have you got of those?

Mr. NEVILLE: I should not like to say, my Lord. I will inquire.

A Mr. Justice BYRNE: There is such a thing as going on till some of them make some admissions.

Mr. WALTER: The more I see the better I like it. I shall be sure to get something out of some of them.

Mr. THOMAS WILLIAM DAVIES, sworn.

B Examined by Mr. NEVILLE.

3514. Are you a qualified chemist with Messrs. Burroughs Wellcome & Co. ?—I am.

3515. Will you look at that. (Prescription handed to Witness.) Is that document a prescription in your handwriting ?—Yes.

C 3516. Did you write that in accordance with instructions you received? —I did.

3517. Do you see the letters B. W. & Co. Is that also in your handwriting ?—Certainly.

3518. Was that written at the same time as the rest, or has it been D added subsequently ?—It was written at the time.

(Put in and marked W.T.D. 2.)

3519. What did you do with the paper when you had written that prescription ?—I handed it to the clerk who brought the request to me.

3520. And you have seen it since ?—I saw it on Saturday.

E 3521. On Saturday for the first time since ?—In this Court, yes.

3522. Was the stamp of Thompson & Capper upon it ? Do you see the stamp to the left hand side ?—I see the stamp of Thompson & Capper here, but it was not there when I wrote it.

3523. That has been added since ?—Undoubtedly.

F 3524. I only want to know exactly how it was when you had it. There is a corner cut off; was it cut off whan you wrote out the prescription ?—No, that has been done since.

3525. With those two exceptions, is it in the same state it was when you handed it to the clerk ?—Yes, undoubtedly.

G 3526. With the exception of cutting out the corner and the stamp of Thompson & Capper ——?—And these letters "W.B.D. 2."

3527. The body of it, including "B. W. & Co.," was written how long ago was it, about ?—September; I put the date on at the time.

Cross-examined by Mr. WALTER.

H 3528. Do you know the purpose of this prescription at all ?—I had an idea at the time it was for some substitution case.

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Mr. T. W. Davies.

3529. "Captain James" was quite an imaginary person?—Yes, quite.

3530. In fact, the whole prescription was a fiction of the imagination?—Well, I suppose it was.

3531. You knew it was for a substitution case, I suppose?—I guessed it was so; I was not told so specifically.

3532. Do you remember the particular circumstance?—I remember writing that prescription.

3533. One of many, I suppose?—Several.

3534. About how often a week do you write these?—I have not written any for a long time—a considerable time.

3535. Have you been in the habit of writing many?—No.

3536. About how many do you think you have written?—I should think about 20—something like that.

3537. All about the same time?—No.

3538. Many at that time?—I could not tell exactly.

3539. What is there that recalls this to your mind?—Because of "Captain James," for instance, and the way in which the initials are given.

3540. I do not quite understand?—If you will look, you will find that my initials are T. W. D. In that case they are simply a little mixed; they are W. T. D. in that instance.

3541. All you recollect is that you did write "B. W. & Co."?—I am positive.

3542. Positive you wrote it at the time?—Yes.

3543. You have never seen it from that day until I think you said you saw it in Court?—On Saturday.

3544. That "B. W. & Co." is in your handwriting?—Certainly.

3545. Were you instructed to put "B. W. & Co."?—Certainly.

3546. You were instructed to put "B. W. & Co."?—Yes.

3547. You have told us that beyond the suspicion you had what the purpose was, you knew nothing at all about it?—Nothing at all.

3548. Mr. LEVETT: I am going to call the last technical witness. There will be one more witness my friend, Mr. Neville, will call, and then I will sum up.

Mr. J. Jackson.

Mr. JOHN JACKSON, sworn.

Examined by Mr. LEVETT.

3549. I think you are the senior partner of the firm of Harrison, Parkinson & Co.?—Yes.

3550. You carry on business as manufacturing chemists at Sun Bridge Road, Bradford?—Yes.

3551. How long have you been in the trade?—From an apprentice—50 years next April.

3552. And as a master?—29 years—nearly 30.

3553. I may take it you know something about the trade ?—A little —just.

3554. Do you remember the word "tabloid" coming into use ?—Yes, I do—1884 to 1885, as near as I can remember.

A 3555. In what connection did you first hear of it ?—Always in connection with Burroughs, Wellcome & Co.'s name.

3556. Step by step. In what connection did you first hear of it ?—In connection with compressed drugs.

3557. Made by whom ?—Made by Burroughs, Wellcome & Co.

B 3558. Since that time have you ever heard the word applied to goods made by any other firm ?—No.

3559. Can you tell my Lord, as far as your experience of the trade is, what do the trade mean when they talk of "tabloids" ?—They mean the compressed drugs prepared by Burroughs & Wellcome.

C Cross-examined by Mr. Walter.

3560. Do you make up prescriptions ?—Yes.

3561. Those prescriptions have, I suppose, frequently "B. & W." on them as well as "tabloid" ?—Yes, but more frequently without the "B. W. & Co.,"—very distinctly "tabloids."

D 3562. You frequently get them with "B. & W." or "B. W. & Co.," or Burroughs & Wellcome ?—Occasionally it would be, but mostly without.

3563. Have you ever orders for tabloids other than Burroughs & Wellcome's ?—No.

E 3564. Never had any orders ?—Never had one that I can remember.

3565. That is your memory of it ?—That is my memory.

3566. You have never had to consider an order for a drug that you knew was not Burroughs & Wellcome's under the term "tabloid" ?—No.

3567. Never had any such orders ?—No, not one.

F 3568. You of course knew it was their trade mark ?—We know it as such, and have always done so.

3570. You knew it was Burroughs & Wellcome's trade mark, and always have done ?—Yes.

Mr CHARLES JOHN SAMUEL THOMPSON, sworn.

G Examined by Mr. Neville.

3571. Are you with Burroughs, Wellcome & Co. ?—I am.

3572. What is your address ?—Snow Hill Buildings.

3573. Have you searched a very great number of dictionaries with a view to ascertaining whether "tabloid" was to be found in them ?—I H have.

3574. Have you got the result of your labours in the form of a list ?—I have.

3575. Will you kindly produce that list, please ? I am now asking

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Mr. C J. S. Thomson.

you, is this a list of dictionaries in which the word does not appear, beginning with Barclay's Dictionary, 1800 ? Have you got such a list ?—Yes, I have.

3576. We will just shortly go through them. Barclay's Dictionary, 1800 ; Hooper's Medical Dictionary, 1802 ; Walker's Pronouncing Dictionary of the English Language, 1846 ; Johnson's Dictionary of the English Language, 1870 ; Walker's Pronouncing Dictionary of the English Language, 1872, and the same book in a later edition, 1873 ; is that right ?—Right.

3577. Or is that a supplement ?—No, that is the same work in another edition.

3578. Fowler's Medical Vocabulary, 1875 ; Dunglison's Dictionary of Medical Science, 1876 ; Skeat's Etymological Dictionary, 1882 ; Ogilvie's Imperial Dictionary, 1882-4 ; Harris's Dictionary of Medical Terminology, 1884 ; Payne's Pocket Vocabulary of Medical Terms, 1884 ; Stormarth's Manual of Scientific Terms, 1885 ; Thomas' Medical Dictionary, 1886 ; Lewis' Medical Vocabulary, 1886 ; Webster's Condensed Dictionary, 1886 ; Nuttall's International Dictionary, 1887. I think Nuttall's has the reputation of having more words than any other dictionary in the world ; is that so ?—I cannot say.

3579. Hoblyn's Dictionary of Medical Terms, 1887 ; Hunter's Encyclopædic Dictionary, 1887——

3580. Mr. Justice BYRNE : What made you think that Nuttall had more words ?

Mr. NEVILLE : Because an edition of Nuttall came out at the time when spelling bees were in vogue, and he has a collection of the most extraordinary words you ever came across in your life. A great many, too, that I venture to say are not in the English language at all. That is what I had in my mind. Perhaps I ought not to have said it.

Mr. Justice BYRNE : It was only for the purpose of curiosity, because comparisons are always given in this new dictionary, and it compares them with the Standard, the Century, and one other dictionary.

3581. Mr. NEVILLE : I daresay I did not put it in the right way. What I had in my mind was that about 30 years ago everybody was hunting for words to spell, and Nuttall brought out a dictionary about that time with words which you could not find, and they caught people. Then the list goes on : "Hoblin's Dictionary of Medical Terms, 1887 ; Hunter's Encyclopædic Dictionary, 1887 ; Worcester's Academic Dictionary, 1888 ; Billing's National Medical Dictionary, 1890 ; Webster's International Dictionary, 1890 ; Soule's Dictionary of Synonyms, 1892 ; Nuttall's International Dictionary, 1892 ; Dunglison's Dictionary of Medical Science, 1893 ; Ogilvie's Imperial Dictionary, 1893 ; Webster's Practical Dictionary, 1894 ; Nuttall's International Dictionary, 1894 ; Lloyd's Encyclopædic Dictionary, 1895 ; Webster's Academic Dictionary, 1895 ; Ogilvie's Imperial Dictionary, 1898 ; Webster's International Dictionary, 1898 ; Annandale's Dictionary, 1899 ; the Standard Dictionary, 1900 ; Webster's International Dictionary, 1900 ; Mayne's Medical Vocabulary, 1902 ; the Standard Dictionary, 1902 ; Webster's International Dictionary

(minus the Supplement), 1902." That finishes the dictionaries?—That gives the complete list of the dictionaries.

3582. I think my friend shows the Century Dictionary. Did you find the word in the Century Dictionary?—Yes, I did.

A 3583. In which edition?—In the edition published in 1889 to ~~1901~~. 8 I. 1891

3584. Then after that did it alter the form of the entry?—Yes, it did.

3585. I think we have that. The present entry is referring to it as a proprietary name———

B 3586. Mr. WALTER: Used as a trade mark?—Yes, we have that in. We can refer to that.

3587. You did find in that dictionary in some other cases the use of the word?—In the Century Dictionary—yes.

3588. What was the first dictionary. What was the earliest edition C of any dictionary in which you found the word?—That first edition of the Century Dictionary, 1889 to 1901. That was the first dictionary in which I found the word "tabloid." 89 to 1891

3589. You did find the word in some subsequent editions of dictionaries—in some dictionaries dated or published later?—I did.

D 3590. Was that in the same form as the reference in the Century Dictionary?—The same definition, do you mean?

3591. Yes?—I cannot say it was exactly—not all through.

3592. But that at all events was the first instance?—That was the first instance in the Century Dictionary, ~~1889~~ to ~~1901~~. 1889 I. 1891

E 3593. In some cases, are you familiar with the steps which Messrs. Burroughs, Wellcome & Co. have taken in order to prevent the insertion of the word without an explanation of what is the real meaning of the word?—No, I have nothing to do with that.

3594. In how many dictionaries in all did you find the word after 8 F 1889?—I think about four. 1889/

3595. Including the "Century"?—Including the "Century." I am not quite certain; but I think about four.

3596. Have you also searched pharmacpœias with the view of seeing whether it appears in them. I think, first of all, you took a number of G foreign pharmacopœias?—Yes, I did. 0/

3597. Had they reference to English drugs and English names?—No, they had no English names in foreign pharmacopœias, but I did not find the word "tabloid" mentioned in them.

3598. That does not seem very important. Did you search in the H English text books of medicine and pharmacy?—I did in a large number of them.

3599. And have you a list of those of them in which no reference is made to "tabloids"?—Yes, I have.

3600. Beginning with the Compendium of Modern Pharmacy, The I Druggists' General Receipt Book, and then Der pharmaceutische Chemie, Pharmacopee Universalle, Dictionary of Medicine, The Medical Annual, and the Dictionary of Materia Medica. I need not read them all, my Lord. Have you searched, or can you produce the last edition of the British Pharmacopœa. Have you searched that?—I have.

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3601. Is there any reference to the word "tabloid" in that?—No reference to "tabloid" in the Pharmacopœia Brittanica.

3602. I do not know whether you know, but I expect it is a matter of general knowledge, that this is an authoritative book in Britain. This is the most authoritative of the publications?—That is the authority on medicine issued by the Medical Council, I believe.

3603. Is 1898 the last edition?—That is the last edition—1898.

3604. Then perhaps I had better put a copy of that in. You have searched it, and you can assure us that there is no reference to the word "tabloid"?—There is no reference to "tabloid" in that pharmacopœia.

3605. I think there has been an addendum to this issue, has not there?—There has.

3606. We had better have that as well. I have not got it immediately in Court, but your Lordship, I daresay, will allow me to put it in later. You have searched that, too?—That contains no reference to the word "Tabloid."

(The book was put in and marked C.J.S.T. 1.)

Cross-examined by Mr. WALTER.

3607. You have given us the result of your labour, I see, in a tabular form, where the word "tabloid" was not mentioned. Have you prepared similar lists where it is mentioned?—I have a number of books where it is mentioned in this list here.

3608. Will you let me see that list? (Handed.)

Mr. NEVILLE: Might I have that book back, my Lord, for a moment? (Handed.)

3609. Mr. WALTER: We have already heard the Century Dictionary had it in the first instance "tabloid," table plus oid, a tablet, a small troche, usually administered by the mouth," and so on. Then in 1899, after a communication, it was put "and as a trade mark"?—And as a trade mark, I believe.

3610. Keeping the definition the same "tabloid" (table plus oid), something resembling a table or tablet applied only (and as a trade mark) to certain small troches usually administered," and so on. I see the Standard Dictionary you have?—Yes.

3611. And Chambers' Dictionary which we have also got. I see it was published also in "Hoblyn's Dictionary of Terms used in Medicine." "The name given to small bi-convex tablets consisting of one or more drugs greatly compressed so as to form a very convenient manner of administration in the solid state." Another one I was going to ask you about is one I see here—Gould's Medical Dictionary, 1900.

Mr. Justice BYRNE: Chambers' Dictionary published in 1898 and 1901 seems to have it in.

Mr. WALTER: Yes, my Lord. Chambers' Dictionary "Tablet, tab'let, n. A small flat surface; something flat on which to write, paint, &c." Then "Tabloid, a small tablet containing a certain definite portion of some drug, a troche or lozenge (Diminutive of table)." Then in

Hoblyn's Dictionary of Terms used in Medicine in 1892, which I had not got in mind: "Tabloids. The name given to small bi-convex tablets," and so on. I have read that. Now Gould's Medical Dictionary, "tabloid (tabula, table-like) a preparation resembling a flat troche or lozenge." I see Lippincott's Medical Dictionary of 1897, "tabloid—a compressed tablet." Webster, your Lordship, called attention to in the supplement.

Mr. Justice BYRNE: That is in 1902.

Mr. WALTER: Then the New Pronouncing Pocket Dictionary of the English Language, "tabloid—tabloid a small cake of sweetmeat." Then Foster, I think, my Lord, we have had—Foster's Reference Book of Practical Therapeutics. No, it was one of the other Foster's we had—it was Foster's Medical Dictionary. Foster's Reference Book of Practical Therapeutics is as follows: "Tabloids—this is a synonym used in England to denote compressed tablets."

3612. Mr. Justice BYRNE: The earliest use of the word that I have come across in this list is in Remington's Practice of Pharmacy, published in 1888. I think that is the earliest?—That is a medical text book, my Lord. I think that is the earliest text book. It is referred to on page 14 just after the pharmacopœias.

3613. Mr. WALTER: Remington, I am afraid I have not got at all?—I think that appears there, but it is rather out of order. That has been upset. I think I can find it for you.

(Document handed to the Witness.)

Mr. Justice BYRNE: There is an earlier mention—in Martindale.

Mr. WALTER: Martindale's Extra Pharmacopœia—that is the one I have as the earliest.

Mr. Justice BYRNE: That is 1885. "Tabloids of hydro-chlorate of cocaine are prepared for hypodermic injection." It is suggested here, and it probably is the fact that that does refer to Burroughs, Wellcome & Co.

3614. Mr. WALTER: Is it in that list?—I do not see it here—it appears to be missing. It seems to have got out of place.

3615. Mr. Justice BYRNE: Has it got the others? It gives the same book in 1894 with it altered, and then Moore's Manual of Family Medicine—has it got that—in 1893? That refers clearly and solely to Burroughs, Wellcome & Co.?—Yes.

Mr. Justice BYRNE: And Parke's guide to Health in Africa, 1893.

3616. Mr. WALTER: Hoblyn's I think was in your list, was not it?—Yes, I have searched Hoblyn, I think you have a record of it there.

3617. And the Century and Foster's Medical Dictionary, too?—Yes.

3618. The Standard, and Cassell's, I do not think is in your list?—No. I think Cassell's publish an edition of Nuttall's Dictionary. Is that the one you allude to?

3619. No, Cassell's Encyclopædic Dictionary?—No, I do not remember to have searched Cassell's Encyclopædic Dictionary.

3620. And Blackie's Standard Dictionary?—No. I take it they are dictionaries of not much account.

3621. What, Blackie's Standard Dictionary?—They do not appear on the reference shelves of the British Museum Reading Room.

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3622. That defines tabloid : "a small lozenge containing medicine—a troche" ?—Oh.

3623. That must be looked into, of course. There seems to be a considerable consensus of opinion as to its being "table" and "oid" ?—I cannot say. Do you mean in the dictionaries ?

3624. Yes ?—Some of them have it so, I believe.

3625. You merely come here to give us the results of your search ?—That is all, simply. I do not pretend to be a student of philology.

Mr. NEVILLE : What your Lordship has had better be treated as in.

Mr. Justice BYRNE : It had better be put in and Mr. Walter have a copy made of what is put in.

Mr. WALTER : Not all of that.

Mr. Justice BYRNE : There is something in my list that is not in the one Mr. Walter was using, and which the witness could not find. It is nearly the oldest of all—Remington's Practice of Pharmacy in 1888. That clearly refers to it as being tablets made on an enormous scale by John Wyeth & Brother, of Philadelphia, and Burroughs, Wellcome & Co., of London. In 1894 it is altered again. "Burroughs, Wellcome & Co., London, are the principal manufacturers of compressed goods in Europe. Their products are sold under the trade mark brand of tabloid—an arbitrarily coined word." The original obviously refers to their particular productions.

Mr. LEVETT : I want to get the right list in. I think the witness had something in his hand.

Mr. Justice BYRNE : It will be better if I hand this down to you, and you see that the right thing is put in.

Mr. NEVILLE : Before we part with him, this witness is responsible for the whole of it. It is not a question of two witnesses having done it, but he has had one set, and what he had in his hand had got displaced. He is responsible for the whole. If my friend wants to ask him some questions on it, he had better have it all at one time.

Mr. WALTER : There is a lot there that clearly is put in by Burroughs, Wellcome & Co.

Mr. NEVILLE : But it shows what is in the books.

Mr. LEVETT : Let us know what is in and not in.

Mr. NEVILLE : It is all in, as I understand.

Mr. Justice BYRNE : The witness has referred to a list. A particular part of it seems to have been mislaid and not been with it. You had better let him get his own list complete for you and Mr. Walter can recall him if he likes.

Mr. WALTER : I do not want him.

Mr. NEVILLE : I do not think my friend wants him again.

Mr. Justice BYRNE : No ; he would accept what he produced.

Mr. NEVILLE : My friend and I agree we can refer to the books if we want to, and this list is only a convenient form of recording what is in them.

Mr. Justice BYRNE : Yes.

Mr. LEVETT: If your Lordship pleases, that will be our case. Before I deal with the evidence in detail, I will just give your Lordship a summary of the witnesses we have called and the witnesses we have not called. We have called 12 London doctors. We have called five London chemists. We have called country doctors from Edinburgh, Manchester, Birmingham, Brighton, Cambridge and Dublin—that is six places. We have called country chemists from Liverpool, Manchester, Glasgow, Birmingham, Oxford, Southsea, Salisbury, Dublin, Brighton, Southampton—that is 10 places. Of London wholesale people we have called four; of country wholesale people we have called three. We have called four photographic witnesses; four witnesses who are editors of medical journals, and two manufacturers. We were prepared to call six more London doctors and eight more London chemists. I am afraid we have counted some of those twice, and therefore I will give your Lordship the others later.

Mr. Justice BYRNE: Yes, it is merely an epitome.

Mr. LEVETT: There are more doctors who come from the same places.

Now, to sum up the case. Our case is very simple. It is two-fold; it is trade mark and passing-off. The passing-off is divided into two branches—the first is passing-off with letters like B. W. & Co., or with a distinct statement that the goods required were the goods of Burroughs, Wellcome & Co.

Mr. WALTER: There is an express disclaimer of that, and an offer of an undertaking.

Mr. LEVETT: You are not listening to what I am saying. That is the second branch I am coming to. The first branch is the passing-off with knowledge, that is where the letters "B. W. & Co." are used or the actual words Burroughs, Wellcome & Co. On that we are at issue. They say they did not do it. The second branch of that sub-division is this: It is practically admitted that they did, when asked for "tabloids," supply goods that were not our manufacture.

Mr. WALTER: I do not want to interrupt my learned friend, but I point out that we offered an undertaking with regard to the first.

Mr. LEVETT: We do not want an undertaking now. We will have the whole case out. They are too willing to give an undertaking. I quite agree my friend is most judicious in trying to get rid of the case on that.

As to the first point, namely, trade mark, the registration has been proved, and the admission we have is that the goods have been supplied in answer to orders for "tabloids" (which is a trade mark) which were not the goods of Burroughs, Wellcome & Co. If your Lordship, for the sake of convenience, will look at the Statement of Claim, page 3, where that table is set out, your Lordship will find that in three cases, the Sykes case, the Davies case, and the T. Smith case, they fall within the first category of what I call wilful passing off. The others fall within the second category of what they claim they have the right to do. They claim the right that if anyone comes to their shop and asks for Cascara Tabloids they can supply any make they like so long as they are Cascara, and

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compressed drugs. Now, as I told your Lordship, the second part was admitted, and I had better read the admission, which your Lordship will find in paragraph 5 of their Defence : "Save as to the sales referred to in paragraph 7 of the Statement of Claim to W. H. Sykes, to W. B. Davies, and to T. Smith the Defendants have no knowledge of the sales referred to in such paragraph, but as they claim the right to sell medical preparations in tabloid form under their ordinary description of 'tabloids' they are prepared for the purposes of this action to admit the sales referred to in such paragraph other than the sales to Sykes, Davies and Smith aforesaid. They did not supply to the said Sykes, or to the said Davies, or to the said Smith, any goods not of the manufacture of the Plaintiff as and for the goods of the Plaintiff. As to the said Sykes and the said Davies, both such purchasers were in terms informed by the Defendants' salesman that the goods supplied to them were not the goods of the Plaintiff, but the goods of the Defendants. As to the said Smith, the order was not in writing, but was given verbally, and no mention was made by the said Smith that the goods of the Plaintiff were required, nor was any written order given for such goods." There is some little error there, because Smith had a list. I think Sykes was the case of the verbal order, but the Defendants have made some slip between the witnesses. In paragraph 7 : "They admit that the word 'tabloid,' coupled with the letters B. W. & Co. or the name Burroughs, Wellcome & Co. means goods of the Plaintiff and no others. They have not supplied and are not in the habit of supplying any goods other than the goods of the Plaintiff under orders in which the word 'tabloid' is coupled with such letters or name. And they are and always have been ready to give any undertaking not to sell under orders so given any goods other than those of the Plaintiff. No notice of any such claim or any notice at all was given to the Defendants prior to the issue of the Writ in this action." My Lord, I think I have fairly stated what their defence is.

Now as to the first point, the trade mark At the present moment my marks are on the register, and the admission I have there, that they have been selling goods, and claim the right to sell goods, in answer to an order for "tabloids," which is my registered trade mark, is a clear breach and infringement of my trade mark. It is not necessary that they should put "tabloid" outside their bottles. It is quite enough user of my trade mark if in answer to an order for "tabloids" they supply goods which are not of my manufacture. Therefore, unless my friend succeeds in his motion to remove my marks from the register, the action is undefended, there has been a clear infringement of the trade mark. That is all I need say about that

Now, as to passing off, that will go to two heads, and the first head will be this : Have I proved those three particular cases, Sykes, Davies, and Smith, were cases in which in one case by word of mouth the words Burroughs, Wellcome & Co. were used, and in two cases where the letters "B. W. & Co." were used in writing. There was no cross-examination of my evidence that the goods supplied them were not of my

manufacture. Your Lordship has noticed that. Now, I will deal with the evidence. Has your Lordship been supplied with the prints ? Nov. 24, 1903

Mr. Justice BYRNE : Yes, I have.

Mr. LEVETT : First, will your Lordship take the second day, at page 76. That is Miss Davies, Question 642 : " Did you take with you a prescription that had been given you ?—I did. Q. Have you got that prescription ?—No." Then your Lordship says it is in the box that was handed in. " Q. Is that the prescription ?—Yes. Q. I see there is a bit cut out of the corner ; was that cut out when you had it ?—Yes. Q. It was just like that when you took it down ?—Yes. Q. Was the stamp of Thompson & Capper on it when you took it down ?—No. Q. They put that on ?—Yes. Q. You went down with that prescription to the shop ?—Yes. Q. Did you hand it over the counter ?—I did. Q. To someone serving in the shop ?—Yes. Q. Just read, would you, what is on the paper—it is very short ?—' Tabloid potassia,' is it ? " Then Mr. Neville reads it : " ' Tabloid potassii chlorati,' B. W. & Co." Is that paper before your Lordship ?

Mr. Justice BYRNE : It is not before me at the moment. I have seen it.

Mr. LEVETT : Your Lordship ought to have the paper before you. " ' Tabloid potassii chlorati, B. W. & Co. One bottle of 40. When throat symptoms are threatened suck one of these. 8 September, 1902.' The name at the top is ' Capt. James.' Just hand that to my Lord. (Mr. Justice Byrne) : This will be W.B.D. 1. (Mr. Neville) : It is already marked, my Lord. If your Lordship does not mind it would be simpler to keep to that. Q. Was the person in the shop a man or a woman ?—A man."

Mr. Justice BYRNE : For fear of confusion, it is W.B.D. 2, that first one, the prescription. You may be a little misled by that being marked W.B.D. 1.

Mr. WALTER : Yes, it is marked W.B.D. 1, a little lower down.

Mr. LEVETT : Yes, that is so. Now the cross-examination : "How many visits have you paid to Messrs. Thompson & Capper's ?—Four. Q. Did you take prescriptions in each case ?—No. Q. What were your other visits for ?—To see if I could identify the assistant. Q. When did you go ?—The first time, on the 10th September, 1902. Q. When did you go afterwards ?—I went a second time on the same day. I called again, last September, twice. Q. That is in 1903 ?—Yes. Q. Is that all that you have been ?—That is all. Q. Did you go to any other shops ?—Only to Thompson & Capper's. Q. They have two shops in Manchester ?—Yes. Q. Did you go to both or only one ?—I have been to both. Q. When did you go to the other one ?—I went this last September. Q. You went to both shops ?—Yes. Q. To try and identify him ?—Yes. Q. And did not succeed ?—I did not succeed. Q. I understand what was said to you was that nothing was said to you at all except that the prescription would be made up ?—I was asked if I particularly wanted Burroughs & Wellcome's, and I said yes. Q. Why did not you tell us that when my friend asked you ?—I am afraid I did not quite understand

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what he said. Q. Did you say 'Yes'?—I said I wanted Burroughs & Wellcome's particularly. (Mr. Justice Byrne): You did not say it in those words, did you? As I understand you, he asked you if you particularly wanted Burroughs & Wellcome's?—Yes, that is with regard to the tabloids." Then Mr. Walter says: "What tabloids are you referring to? (Mr. Justice Byrne): What is wanted first is what was said. (Mr. Walter): Yes, my Lord. First of all, what did the attendant say?—Nothing with regard to the prescription, but that he would get it for me. Q. Then there was another order?" That is a point I want to make clear. As far as we can tell, the tabloids that were supplied were our own tabloids. There is no complaint about that. Then your Lordship says: "Was there anything on the same occasion when you got this prescription?—Yes, I had some tabloids to get." Then there is a point my friend, Mr. Walter, put. He did ask for our tabloids, and as far as we know he got them. "(Mr. Walter): We have heard nothing about that at all—no suggestion made of anything of the kind. You called for some tabloids as well?—I did. Q. There was a list. What was on the list?—Various articles of no importance amongst which was tabloids. Q. Tabloids of what?—Something for the throat. Q. The attendant did what?—I asked for the tabloids and I asked for the prescription. I asked to take the tabloids then and there, but he said: 'It will take as long to make the tabloids as it will to get the prescription.'" It goes on at Q. 694: "You did get Burroughs & Wellcome's tabloids?—To my knowledge, yes. (Mr. Justice Byrne): That is to say you got another bottle of tabloids besides *this*. (Mr. Walter): Yes. (Mr. Justice Byrne): I want to know what you mean. We know you got that bottle with the prescription?—Yes. Q. Then did you get any other tabloids?—Yes, for the throat. (Mr. Walter): You got the tabloids you asked for, and those were Burroughs & Wellcome's?—To my knowledge, yes." That is all I need read to you about that, except at Question 713, where you Lordship says—"No—one bottle and a tin box. One bottle with a prescription and a tin box with these other things?—Yes, I believe it was a little tin box. (Mr. Walter): Are you certain and so on." To-day we had the gentleman who wrote the prescription, Mr. Davis, and he told your Lordship he wrote it in September, and the words were there. I think if your Lordship looks at the ink you will see it is pretty clear; I have looked at it myself.

Mr. Justice BYRNE: There is something I do not understand at Question 714: "I asked that, my Lord, because we have got a copy of the prescription in our books (Handing copy to your Lordship)."

Mr. KERLY: It was the prescription which was handed up.

Mr. WALTER: Not a copy.

Mr. Justice BYRNE: Then we will strike that out.

Mr. WALTER: Strike the whole sentence out, my Lord.

Mr. NEVILLE: There was no copy handed up.

Mr. LEVETT: On that evidence we have proved this thing—we have got at the fact that the letters "B. W. & Co." were there. Might I see the bottle for one moment. (Bottle handed to the learned Counsel.) There is "Captain James" on it, and that shows that it fits the prescription.

So we have proved beyond doubt that our prescription contained the letters "B. W. & Co." and what they supplied was not of our make. That is our first case. The second case was the case of Thomas Smith, and his evidence begins at the bottom of page 80. He says he went on the 12th September last year, and then he produced a list which is marked T. S. 2. "12th of September, 1903. Get watch; 'Temporal Power' (Marie Corelli). Small bottle cascara sagrada tabloids B. W. & Co. Tobacco.' Is that right?—Yes." The list was put in, and there on that list there was, no doubt, "B. W. & Co." in writing. Your Lordship will remember it, and I need not read how he describes how he stumbled over the word "sagrada," and then handed the list to the man, and the man read it. "What did he do then?—He then took a bottle from the case and made it up and handed it to me." That bottle was put in and that bottle again was not ours. Now I turn to the cross-examination to see whether that affects the evidence at all. "Q. Did you pay any other visits?—No others other than for the purpose of identification. Q. Nothing else? Other visits were made by other clerks, were they?—I believe so." Then there was a question of what he was going to get; but I do not see that that affects the question very much. Then he is asked about the stumbling. Your Lordship says: "You purposely stumbled?—I purposely stumbled. Then I said 'tabloids.' (Mr. Walter): Did you stumble over that?—No, I did not. Q. That you brought out with a good round emphasis so as to impress it on him?—That I said quite clearly Q. What did you stumble over 'sagrada' for?—That I might hand him the list, so that he might know clearly what I wanted." Then at Question 776 he is asked, "Do you tell my Lord you do not know?—I was asked to go and buy a bottle of tabloids." Then he is asked about the reading on page 83, Question 778, "You suggest he read it?—Yes, I I do. Q. What did he want to read it for?—When I gave it to him he looked at it. Q. He saw cascara sagrada, which you had asked for?—Probably he did. Q. You suggest that he studied this?—I suggest that he read the whole order. Q. Do you suggest that he read the whole of the order?—I do. Q. He knew at once what you wanted when you asked for sagrada?—He looked at the list and said 'Yes.' Q. There was no prescription or anything of the kind—nothing was copied?—There was nothing except the list. Q. He copied nothing?—No." That stops there. So we have the list put in, and a rather ingenious way of getting it read by stumbling over the word. On looking at the list he could not fail to see the letters "B. W. & Co.," so I submit we have proved that case.

The third case stands on a different footing, because it is a case of verbal evidence. It is Mr. Sykes. Your Lordship will find his evidence at page 103 on the third day, and he is corroborated by Mr. Brabazon, the articled clerk who went with him. He calls on the 13th August. He goes with the articled clerk. Question 1167 is this: "What did you ask him for?—I asked him for a bottle of Burroughs & Wellcome's cascara sagrada tabloids. Q. What did he say to you?—He went round to the show-case, got a bottle, and immediately previous to wrapping it up he said: 'It has got our name on.' I

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said : ' Are they Burroughs & Wellcome's goods,' and he said : ' Yes.' I said : ' Very well,' and he wrapped them up and gave them to me." Then he spoke about the price. " A. He asked me if I wanted a 1s. 9d. bottle or a shilling one, so I elected to take the shilling one. Q. I think you paid him the shilling. Do you produce the bottle he gave you ?—Yes. (Bottle produced.) Q. Is that the bottle ?—That is the bottle. Q. It is marked ' W.H.S. 1.' Where was Mr. Brabazon when this conversation took place ?—Immediately at my right hand." Then he is cross-examined. He was first asked what communication had been made to the Defendants, and at Question 1185 there is this: Q. You asked verbally for Burroughs & Wellcome's cascara tabloids, and you were told that the goods were their own ?—I was led to believe that the goods were Messrs. Burroughs & Wellcome's. Q. What was the exact statement that was made to you ?—When the assistant got the bottle he said, ' It has got our label on.' I said, ' Are they Burroughs & Wellcome's goods ? ' and he said, ' Yes.' Q. Are you perfectly certain of what was said to you, or whether you were not told the goods were their own ? — I was not told the goods were their own. Q. You were not told the goods were theirs ?—I was not. Q. Have you been since ?—I have been only for identification." Then the rest does not matter. Then Mr. Brabazon was called. He went with him, and at the top of page 106 I asked this question : " Q. What took place ?—Mr Sykes was asked for some Burroughs, Wellcome & Co.'s cascara sagrada tabloids. and the assistant behind the counter came out to get a bottle and as he was doing it up he said : ' They have got our name on them.' Mr. Sykes said : ' Are they Burroughs & Wellcome's ? ' and he said : ' Yes.' Before that he asked what price Mr. Sykes would have them at, 1s. 9d. or 1s., and Mr. Sykes said 1s. Q. Was the bottle wrapped up ? As he was wrapping it up he said : ' These have our name on.' " Then he was cross-examined. " Q. Did you know anything about it at all before you went ?—I guessed that there was something about it. Q. Did you know anything about tablets ?—I knew nothing about it. Q. You were merely hunting in couples—a lot of you. The whole staff almost were employed on this ?—I do not know how many were employed. Q. A very large number ?—I do not know how many. Q. Was it a matter of common discussion in the office ?—Not before I went. Q. It was afterwards ?—I did not know of it." Of course, my friend did not venture to attack him on his simple statement of what took place. He put what I call the fringe and all round matter, and then with great discretion he left the subject for fear he might leave it worse. I submit that whatever evidence my friend may give on that point, as the evidence at present stands, that case is clearly made out. The point was brought to the minds of the assistants : " Do not mind the name on the bottle as long as the goods supplied are our goods." That finishes the evidence completely on that point, and I stand by that evidence.

On the other part of the case, although the evidence has taken a long time, I think I can shorten it a great deal in what I have to say to your

Lordship. I am going to submit that we have proved, and I think the cross-examination shows that it is admitted, four things. Nov. 24, 1903

Mr. Justice BYRNE: You mean, assuming your trade mark is gone, on the second branch of it.

A Mr. LEVETT: Yes, the passing off. I shall have one word to say as to the meaning of the Statute where it says "fancy words." That is a separate point which I shall pick up again. I would rather deal with my action now.

I am going to submit that four points have been conclusively proved; B first, that the word "tabloid" was not known before the year 1884; secondly, that it came into knowledge associated with our goods; thirdly, that it has never been employed in association with the goods of anyone else; and fourthly, that so far as the trade is concerned, it has been accepted as meaning our goods. Those are the four points I am going to submit.

C On the first point there was no cross-examination, and my friend Mr. Walter did not suggest to any one of our witnesses that they had heard the word before. As I say, we invented it.

Now, on the second point, I think, that is equally admitted, because although we have had a mass of cross-examination, and we have had to D call all the people in the trade, not one single trade list has been put to any of our witnesses which contained the word "tabloid," except with reference to our goods. I cannot imagine stronger evidence. Just think what that means. For nearly 20 years we have been selling these goods broadcast. My friend complains that we have had too much E literature, but we have advertised them, I was going to say, uphill and down dale in all the shops. We have sent round the pocket books; we have sent round the diaries; we have made cases, and we have put it in all the medical journals we can think of, so that everything has been done and yet not a single advertisement on trade list or circular of any shape F or form can be produced with the word "tabloid" in it, except in connection with our goods. Therefore, as far as the third point is concerned, I submit that is conclusive. It is too late now, and it must have been put to our witnesses if there had been any such case to say that there had been any trade user of the G word "tabloid" in any sense differing from what I say is the user of our goods. We have put all the catalogues we could think of in. Each witness was asked again: "'Tabloid' in each one of these means Burroughs & Wellcome's production," and therefore on that point I say we have two things. How far does that go to the establishment in the H trade and the public—because I can guess rather what the case is going to be—that the public have some sort of idea: "I think it means this. Do you see one of these tablets of bi-convex form," and that tablet has been in that form say 19 years, and the public will not see the small ophthalmic tablets, they would see the little I thing a quarter of an inch across—a little white thing double convex, and they would naturally get to associate the shape with the particular thing. If you always see a particular thing in a particular shape you associate them together. Supposing anybody was asked: What is the shape of the queen in a game of chess? She is no more like

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a queen than anything else. We should not have the least doubt. She has a round head and the king has a crown.

Mr. Justice BYRNE: Your view is, you say, the primary meaning of the word means the goods and nothing else in so far as those goods were made in a particular shape, and a secondary meaning may have been more or less acquired by it.

Mr. LEVETT: I do not say a "meaning." I rather go to the association of ideas.

Mr. JUSTICE BYRNE: I rather jumped to the conclusion myself when I first heard it. I thought Mr. Neville's criticism was accurate. I am so accustomed to look at these things and knew they were so called. Suppose the shape of them had not been this shape at all; supposing they had been little round flat discs, I do not know why that should not have got that meaning, so far as one applies it to shape at all—why one should not have considered that was just as well described by the word used.

Mr. LEVETT: That might have been so, certainly.

Mr. Justice BYRNE: Your suggestion would be that when the thing gets a very familiar object, the word gradually gets associated with that.

Mr. LEVETT: I was going to follow that up with the association of ideas. My learned friend put one of those little things before one of our witnesses, and he said, "I do not know whether that is a tabloid or not," in the most natural way. He did not know. Why? Because in shape and colour the thing my learned friend Mr. Walter handed up was just like a tabloid. I did not know which it was. If I was an analyst I could tell you, and so our witnesses said in the box.

Mr. Justice BYRNE: For instance, put it in this way—supposing somebody produced a thing of that shape—not a medical article at all—perhaps it belonged to a counter in a game or something of that sort—and wanted to describe it as something else, and he said it was a tabloid, I think he might very likely now so describe it if that was the familar shape of these things.

Mr. LEVETT: Your Lordship has gone back to the original idea. It is with reference to that old thing which we had got into our mind through the advertisements that we give it the new description.

Mr. Justice BYRNE: That may be.

Mr. LEVETT: I was trying to get it the other way by the association of ideas. No doubt the two really come about in the same way. There can be no doubt I have a perfectly good fancy word. I have advertised it so well that there has been an association formed in the public mind between the shape of my goods and the name of my goods. Supposing they had been cube-shaped like the ordinary die—if my tabloid had been in a cubic shape—no doubt the same idea would have arisen. Tabloid, then, if well advertised would have been associated with the idea of a cube at the bottom of it. It was only because a tabloid happened to have a cubical shape that the association came in, and it cannot be suggested that that which has originally a definite meaning, which by association conveys something else, loses its definite meaning. Take my

learned friend's own instance—I do not remember the papers he quoted from—one was "Punch"—"Tabloid opera."

Mr. Justice BYRNE: "Knowledge in tabloid form" was another thing.

A Mr. LEVETT: I forget the paper he quoted from, it is not one I study—"The Tatler," I am told. Let us test it by my learned friend's case of "Knowledge in tabloid form." I know what that man meant to say. He was not talking of the bi-convex disc a bit—he was talking of the compressed idea, because the idea is the compressed drug idea—and B "Knowledge in tabloid form" would mean, if it meant anything, as I suppose it did—knowledge in a compressed form. My friend, Mr. Neville, suggests that whatever happens it cannot be said that knowledge ever assumes a bi-convex, or any other convex, form. So it must have meant that. The idea in the "Tatler" must have been knowledge in a C concentrated form. That is a very good illustration of how the idea passes on. Take another instance. My learned friend read I think from the encyclopædia about the tabloid cells—the tabloid cork cells.

Mr. Justice BYRNE: Yes, I remember.

Mr. LEVETT: That is very interesting—I have read it—the way D the particular cells decompose and split up. I have no doubt the person who wrote that was thinking of the form of tabloid, he was thinking there that they would be bi-convex—he had abstracted from the whole the particular idea of bi-convex form, and he did not mean to say there was any compression about it, or any drug about it. He meant to say there E was a bi-convex form, so we see how each attribute is taken.

Mr. Justice BYRNE: What was the date of that?

Mr. LEVETT: I forget my Lord., the book went back to the library.

Mr. Justice BYRNE: That was the supplemental volume to the F Encyclopædia, was not it?

Mr. LEVETT: Yes, it was. The point I am on is the question of abstraction. That is quite recent. It does not matter how recent it was, I am on this point of abstraction of ideas. For a particular purpose each individual idea may be used by one person as expressing one abstract idea G and by another person for another. That is the real point I want to make. So in "Knowledge in Tabloid form" it is one thing, and in the case and the cell in the tabloid form it means another thing. How can it be said that has made the word a word of public right? That, as I understand, is the real point we have to meet. It is said that H "tabloid" has become so well known that "tabloid," whatever it may have meant at first, has now come to mean a compressed drug in a certain shape. That, I understand, is the principal defence. That will not do at all, because throughout we have had trade user continuous. Throughout we have had the absence of the user in any other sense at all, but we I have had the varying user of the attributes. My learned friend used the word "Kodak," that might be a secondary meaning too. I believe the word "Kodaking" has been used—that means to go a tour with the idea of taking photographs. No one can say "Kodak" is a member of the English language. The idea there was to go on a tour where you

Nov. 24, 1903 — would take photographs. Therefore, I submit, if my learned friend were to call half the people in the street who had ever seen tabloid at all, and they said: "We know nothing about Burroughs & Well come, we only know a little white thing that had a convex shape," that would not help him a bit as between the people who buy and sell— A the trader. They have known the history, the origin, throughout, and in every trade list that has been put in they have worked on the footing that tabloid has its own meaning. Therefore, they cannot, I submit, pass off their goods on the public as tabloids in the way I say they have, and they cannot say that the inaccurate public has made the word tabloid come to B have a definite shape. They say the public has no idea of the manufacture. That is not an attribute at all. Until my learned friend has put in evidence, I cannot say more than that. I have a few more words to say about this fancy word.

Mr. Justice BYRNE: You say it comes in within fancy word? C

Mr. LEVETT: Yes, I am not going to repeat what Mr. Neville said about an invented word being a fancy word. I think he made that perfectly clear to your Lordship.

I ought just to say a few words about the great attack that has been made on the termination "oid." It has been said it is a common D termination, that it means "like," that this is not a fancy word at all, and therefore it cannot be a trade mark. I answer simply: What is a fancy word? I should think the first definition of a fancy word is, "A word you cannot find in any dictionary." A word is a collection of letters. If I choose to take a hat for instance and shake out two vowels E and two consonants, and get some sort of word out, unknown to any human being, if I take that as a trade mark, that would be a good one coming under "a fancy word." Whether that is a good invention or not I do not know. If I had shaken up letters in a hat and taken out as they came, that would have been a fancy word. Why? F Because I take it that is the idea of a fancy word. The House of Lords said you cannot define a fancy word——

Mr. Justice BYRNE: That will not quite do. I believe that is one way, but suppose the letters that came out made CAT and you used that? G

Mr. LEVETT: That is one of the accidents that might happen.

Mr. Justice BYRNE: The mere fact that you get it accidentally out of a hat will not do for you. It is a strong element, I agree.

Mr. LEVETT: But I am trying to submit a distinction between a fancy word and a reasoned word. A fancy word, as I understand it, must H have no existing defined meaning. I had better take it that way. The fancy has to come in to give it a meaning at all. The fancy must be contrasted with the reasoning of it. I am only struggling with a definition, and I am afraid I cannot succeed. Contrasting fancy with reasoning power, you might have a word that you thought had a pleasant I sound, but it must be some sound which does not coincide with the sound of any other word; otherwise you would be only copying, and it would be no fancy word at all. Take another definition: A word that has an entirely new sound. Again, coming nearer to my own,

a word which has not a meaning built up of parts. The argument has been suggested, no doubt, that this word has a meaning, and is built up of parts. Here, again, I say no. It is quite true the letters o-i-d are often found when you wish to say something is like some other thing. Like the old case of spheroid—something like a sphere.

Mr. Justice BYRNE : I was thinking of this case : "Asteroid" was a word invented by Sir David Brewster to represent two particular stars. Undoubtedly that meant "starlike."

Mr. LEVETT : No doubt.

Mr. Justice BYRNE : That was applicable to a natural body, and therefore, although it was, in strictness, an invented word, on his part, he could not keep that because it was a word applied to a natural body discovered by him for the first time. Suppose he had applied that to a lozenge, what then ?

Mr. LEVETT : And never given the stars the benefit of it at all ?

Mr. Justice BYRNE : Yes, and never given the stars the benefit of it.

Mr. LEVETT : I cannot have it both ways, I admit, at once.

Mr. Justice BYRNE : You have a complete Greek word with a complete suffix there.

Mr. LEVETT : No doubt, and it is a fair word, too. It is not a hybrid. I will go even as far as that. I submit if he had given it to the stars first he could not take it back for lozenges. If he had never given it to the stars at all, although he might have got the idea from two stars together, but had simply brought out something——

Mr. Justice BYRNE : A lozenge.

Mr. LEVETT : I will say an astronomical instrument, and call it an "asteriod," it would not be the less a fancy word, because the instrument might be for the purpose of looking at stars to get the angles or something of the sort. That I submit would be a good fancy name for an instrument to use astronomically.

Mr. WALTER : I should be most happy to apply to strike it off the register.

Mr. LEVETT : You would like to get tabloid off.

Mr. Justice BYRNE : I was just wondering whether it was not almost *idem ad idem*.

Mr. LEVETT : "Tab" will not do at all. There is no such word as "tab." I think I have heard the word "tab" used as a small piece of string or braid that hangs out, but I do not know if it is suggested this is a little tab of that sort. Tack L on and say "tabl," that means nothing at all. If we have a made up word we have to find the first root. My friend cross-examined a good deal and suggested "table" as the root. Let us see if it is like a table. I have seen a good many tables, but I never saw one which was bi-convex. There would be a very good reason for not having it bi-convex because nothing would stop on the top. Therefore, if my friend says a tabloid is bi-convex, shaped like a table," I do not agree with him. But let us take "tablet." We all know what a monumental tablet is. Who ever heard of a bi-convex tablet or whoever

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has seen an inscription written on a thing that is bi-convex. Therefore taking the whole thing, this is not like a tablet nor is it like a table. I think the fair thing is to take it that the man said, "I was advised 'tablet' would not do, and I set to work to find a word that sounded nice." He found one, and that was "tabloid." A

Mr. Justice BYRNE: You say it none the less, because consciously or unconsciously, the old word was present to his mind while he was inventing this.

Mr, LEVETT: I should think that probably was so. I will not say one way or the other. He wanted a new word that sounded nice. No B doubt in the Solio case, "Sol" the sun, which is used in photography, helped the man to find "Solio." I submit to your Lordship that this is a fancy word, and that is the whole point.

My friend, Mr. Sebastian, has now corrected my list of witnesses and I can tell your Lordship the people we were prepared to call C and did not call. We were prepared to call other country doctors from Carlisle, Bradford, Bristol, Southsea, Glasgow, Luton, Cardiff, Midhurst. Your Lordship remembers I said we had sometimes two or three from one place; I have counted them once. We were prepared to call eight other London chemists D from different parts of London, and we were prepared to call chemists from all these places—Carlisle, Edinburgh, Hove, Bath, Luton, Cardiff, Swansea, Coventry, Wolverhampton, Hanley, Leamington, Slough, Ipswich, Worksop, Folkestone, Lowestoft, Leicester, Bury St. Edmunds, and Bournemouth. E

Mr. Justice BYRNE: In round figures, about 19 different places.

Mr. LEVETT: Yes, places all over the country. That, my Lord, is all I have to say, and I submit we have established our case.

Mr. Justice BYRNE: Can you tell me, Mr. Walter, how many witnesses you are likely to call? I do not want to tie you down F at all.

Mr. WALTER: Mine are witnesses of quality and not quantity.

Mr. Justice BYRNE: Not a great number.

Mr. WALTER: No, my Lord. I took your Lordship's message to heart, and I have cut them down ruthlessly.

(Adjourned to to-morrow at 10.30.

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In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
24th November, 1903.

BEFORE
MR. JUSTICE BYRNE.

Burroughs, Wellcome & Co.

—v.—

Thompson & Capper.

IN THE MATTER OF THE TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER OF THE PATENTS DESIGNS AND TRADE MARKS' ACTS, 1883-1888.

FOURTH DAY.

MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Plaintiffs' Solicitors

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Defendants' Solicitors.

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C. J. & T.

C. J. & T. (5)

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
Wednesday, November 25th, 1903.

BEFORE—
MR. JUSTICE BYRNE.

BURROUGHS, WELLCOME & CO.

— v.—

THOMPSON & CAPPER.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY, appeared on behalf of the Plaintiffs (instructed by Messrs. MARKBY, STEWART & Co.)

Mr. A. J. WALTER, and Mr. J. H. GRAY, appeared on behalf of the Defendants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

FIFTH DAY.

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Mr. LEVETT: If your Lordship pleases. I think I forgot to have the addenda marked.

Mr. Justice BYRNE: The addenda to the pharmacopœia ?

Mr. LEVETT: Yes, my Lord. I will hand it to the Registrar.

A Mr. WALTER: If your Lordship pleases, it now becomes my duty on behalf of the Defendants to open our case to your Lordship. As your Lordship has known from the earlier proceedings in the case, this case presents various aspects. First of all the Plaintiff alleges that he is in possession of certain trade marks, and in respect of those he sues us for

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infringement. He also says he has acquired the trade reputation, that is to say, that the word "tabloid" means his goods and nothing else; and he says that we have passed off goods in that way. Then there is the further case, which of course I have to open to your Lordship—the motion on our part to rectify the register by the removal of the word "tabloid." I have been thinking as to the best way to deal with the matter, and, as really the whole question arises on the question of the rectification, I propose to commence my remarks to your Lordship by dealing with the question of rectification and then subsequently I will deal with the case as made by the Plaintiffs and afterwards deal with our substantive case in answer to the claim as made by the Plaintiffs.

First of all one has in order to see the grounds upon which rectification arises, to see under which Act these marks are registered. I listened, and listened with some interest, to the views which were expressed on the other side as to which Act it did come under, and as far as I can make out they admitted they come under the Act of 1883, with an *ad misericordiam* appeal to the Act of 1888. They cannot and do not attempt to put their case that they are under the Act of 1888, but they endeavour to drag in, as I say in a kind of *ad miscericordiam* Appeal, something from which they hope to glean comfort under the Act of 1888. May I ask your Lordship's attention, first of all, to the Act of 1888, because I think any such suggestion is disposed of by the terms of the Act. That is an Act to amend the Patents, Designs and Trade Marks Act, 1883, and Section 10 is: "For Section 64 of the principal Act the following section shall be substituted." Section 28 provides that "This Act shall, except so far as is by this Act otherwise specially provided commence and come into operation on the First day of January One thousand eight hundred and eighty-nine." And by Section 27: "The principal Act shall as from the commencement of this Act take effect subject to the additions, omissions and substitutions required by this Act, but nothing in this Act shall affect the validity of any act done, right acquired, or liability incurred before the commencement of this Act." Under Section 90 of the Act of 1883 the liability had already been incurred, that that mark, if improperly registered, might be struck off by any person aggrieved. Section 90 of that Act provides: "The Court may, on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register make such order for making, expunging or varying the entry as the Court thinks fit, or the Court may refuse the application, and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit." That was Section 90 of the very Act under which these marks were registered. That liability is preserved in terms by Section 27 of the Act of 1888. Therefore I say that upon the Act itself the sole authority by which the validity of the registration is to be judged is the Act of 1883, and one must turn to Section 64 of the original Act to see whether or not the

trade marks as registered are rightly registered and rightly upon the register.

I propose to refer to the authorities under the Act of 1888 as showing that, even assuming that the Act of 1888 had any bearing on the case, they are still wrong in their trade mark, and it must be struck off. May I ask your Lordship's attention to Section 64 of the Act of 1883, under which this was registered? "For the purposes of this Act a trade mark must consist of or contain at least one of the following essential particulars: (*a*) A name of an individual or firm"—that is nothing at all; it does not come under that; "(*b*) A written signature"—it does not come under that. Now "(*c*) A distinctive device, mark, brand heading, label, ticket, or fancy word, or words not in common use." That is the section under which this word was registered, and by which the word must be judged. It is suggested, and has been so argued before your Lordship, that *ex necessitate*, a word which had no existence before in a fancy word, and therefore, if, as they allege they were the first and true inventors of the word "tabloid," it is necessarily a fancy word within the meaning of the Act. My Lord, the authorities are absolutely opposed to any such contention. First (though I do not refer to this in any way as being the highest authority on the question)—the termination "oid" has already been urged as a novelty, and they had the advantage in that case that in no dictionary was the word to be found which was so coined. That was the word "electroid," which is "In the matter of Hannay's Trade Mark," in "7th Reports of Patent Cases," at page 46, which was a case which came before Mr. Justice Chitty. Using my friend Mr. Neville's argument, there was no such word known or had ever been heard of as "electr." I do not know what the force of the argument "tabl" may be intended to be, and I will deal with that later; but for what it was worth it was that there was no such word known as "electr," and to those letters the word "oid" was added. I see in the report of the arguments; "For the Respondent it was argued that he was entitled to sever part of the trade mark, and that 'Electroid' was a fancy word, and could stand. It was not a dictionary word, and was not in common use." Mr. Justice Chitty says: "The object of this motion was to rectify the Register of Trade Marks by striking out the Respondents' trade mark, which runs thus: 'Hannay's Electroid Anti-Fouling Composition'"—there were several words, of course—"Mr. Dickinson is constrained to say that those words are distinctive fancy words not in common use." I shall call your Lordship's attention to the "distinctive fancy words." The "distinctive" which is found in Sub-section C, of course, governs everything that follows. "The words to be distinctive must be fancy. As to 'composition,' of course, he cannot say ~~that~~ it, and as to 'anti-fouling,' of course, he cannot say it; but he stands on 'electroid,' and says that is a meaningless word with regard to this subject matter. But his client swears, and there is not the least ground for doubting the truthfulness of his client, that he used the word 'electroid' to indicate the presence of electrical action combined with his new process. It is clear, therefore, it has a meaning and that it is intended by the person who uses it to describe

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the article. Nothing more is to be said. In the result the trade mark must be removed." I am not quoting that as a governing authority on which the broad general principle of the construction of the Act must be applied, but it is interesting as showing that persons have in the past attempted to monopolise ordinary words in the English language by adding to them an ordinary suffix which has become a part of the English language, and in that way to attempt to coin what they describe as a fancy word.

Perhaps the best authority to be found in this section of the Act is *in re* Van Duzer's Trade Mark, in 34, Chancery Division, page 623 ; the headnote of which is : " The fanciful or abnormal use of a word not in itself obviously non-descriptive, does not make it a 'fancy word' within the Patents, Designs and Trade Marks Act, 1883, Section 64, Sub-section 1 (*c*), so as to be capable of registration as a trade mark. And in order to obtain registration of a word as having become 'distinctive' within Section 64, Sub-section 3, by user or recognition in the trade, such user or recognition must have been prior to August, 1875. Accordingly applications for a direction to the Controller-General to proceed with the registration as trade marks of the words 'Melrose Favourite Hair Restorer' and 'Electric Velveteen,' the use of which by the applicants would, independently of the Act, by user and recognition in the trade since August, 1875, have been entitled to protection, were in both cases, reversing Bacon, Vice-Chancellor, refused." The Judgment of the Court of Appeal is on page 634, and Lord Justice Cotton says : " There are two appeals," and so on, and then : " A good deal was said about the intention and object of the Acts of 1875 and 1883. What we have really got to do is—to construe one particular clause in one of those Acts. In my opinion we must take it that, although the intention of the Act was to benefit traders—persons whose goods are known by a particular mark—by giving them, if they registered under the Act, this privilege, that they do not require to enter into evidence at all after five years," and so on. Then, at the top of page 635 : " In the present cases what we have to consider is, whether the two words which are desired to be registered under the Act are fancy words within the meaning of sub-section 3 of section 64 of the Act of 1883. It has also to be considered whether they are 'distinctive' and 'not in common use' ; but the stress of the argument on each side has been on the question whether these two words desired to be registered can be considered 'fancy words' within the meaning of that section. Now, in both cases there has been evidence adduced and relied on by the Respondents. The evidence in each of these cases has been that, in the one case the word 'Melrose' and in the other the word 'Electric' have been used for a very considerable time, and that the trade have recognised goods to which those words were affixed as being the goods of the applicants for registration ; that is to say, the evidence goes to this, that if the Act had not been passed they have, on the evidence before the Court, made out such a case as would entitle them to protection in respect of the use of those particular words. To my mind that is not pertinent here. If the words had been used before August, 1875,

the Act would have given a right, in consequence of that user, to have them registered. What we have to consider is this. Whether the words come within the description of those things which the Act allows to be registered before giving them the privileges of registration which I have already mentioned." Then his Lordship reads the sub-section of the Act, and goes on : " In my opinion that excludes the Respondents from relying on user as a trade mark subsequent to that date. But then it was said that this evidence might be received and regarded, because it showed that these words had become, by user by the trade, recognised as fancy words, that really means had been recognised as trade marks by the trade. But recognition by the trade, or the acquisition of the right to use these things as trade marks by user, is expressly excluded from our consideration, as I understand the Act by that sub-section, which gives a right only in respect of user previous to August, 1875," and so on. " Then it is said that the evidence shows that these words are now considered as fancy words in the trade. I do not think that is so, because it is only recognised as the trade mark of this individual, and in my opinion what Sir Horace Davey put in reply was a matter to be considered—have the words lost their original meaning?—No, and they have not come to be fancy words in any way except this, that they have been recognised by the trade as designating that the goods are the goods of the Applicants—that is, recognised as their trade marks." Then he goes on and deals with various matters, and at the bottom of page 638 he says : " Having made those general observations, applicable to both cases, I will proceed to deal with them separately. The first application is to register as a trade mark the term ' Melrose Favourite Hair Restorer.' The question is as to ' Melrose.' Can that be registered as a trade mark with reference to articles of toilet, and especially a hair preparation? We were asked by the Attorney-General, on behalf of the Appellant, to hold that no geographical expression can come within the description with Section 64, sub-Section 1 (*c*) as ' fancy words or words not in common use.' In my opinion that would be wrong. I do not think one could say that no geographical term could possibly be a ' fancy word or words ' as applied to a particular article, but, in my opinion, it would be wrong to allow the registration of these words ' Melrose Favourite Hair Restorer.' Why? To be registered it must be a fancy word, and in order to come within that description, it must be a word which obviously cannot have reference to any description or designation of where the article is made or of what its character is. When one comes to hear the evidence about ' Melrose,' it is highly improbable that this is any representation of these goods having been made at Melrose ; but in my opinion we ought not to consider what the result is when that evidence is given, but we ought to consider whether from the name and from the description of the article to which it is applied it is obvious—that is to say, whether any ordinary person would understand—that the name could not be intended to designate the place where this was produced. It is perfectly obvious that a very large number of geographical expressions would be calculated to lead to the impression that the article was made in a particular place."

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Then he deals with matters more generally relating to the geographical side of the question. Then on the top of page 640 he says: "Then we come to the second case, where the applicant desires to register the words 'Electric Velvet' and 'Velveteen' in respect of cotton goods. Is that word 'Electric' to be considered as a fancy word? It was contended by Mr. Aston that it was used inappropriately as regards these goods, and therefore that the word was fancifully used. In my opinion a word may not be registered as a trade mark if it is fancifully used, but only if it is a fancy word; and in my opinion we must consider whether it can properly be said that 'electric' is a fancy word, even though applied to velvet or velveteen." Then, my Lord, he goes on and finds that it is not so. Then Lord Justice Lindley says: "These two cases have raised questions of some difficulty, and if it had not been that we had the opportunity of considering them since they were opened, I should have taken further time to look into them. The danger which we have to avoid seems to me to be this. In the first place it is quite obvious that the Patents, Designs and Trade Marks Act, 1883, intended to do no more for the owners of trade marks than was done for them by the Act of 1875, and that object, to benefit them, must not be lost sight of. On the other hand, it is obvious to anyone who looks into the Act with care that there is very great danger in so construing the Act as to make it intolerably burdensome upon other people who have not got registered trade marks, and we must take care that in carrying out one object of the Act we do not impose greater restrictions upon freedom of trade than are necessary for the purpose of carrying out the Act fairly and properly." Then, my Lord, he goes on to deal with certain authorities, and then he says about the middle of page 642: "That was the kind of mischief which was to be cured; and it was to cure it that there were introduced into the Act of 1883 words which were not to be found in the previous Act—I mean 'fancy word or words.' I do not mean to say that, because that is the history of the matter, those words are to be confined to that precise form of fancy word, but it gives us the key to what is meant; and it strikes me, I confess, that upon looking through the Act, and at the object and the history of it, we cannot say that anything is a fancy word which conveys any meaning to an ordinary Englishman. To be a fancy word I think the word must either have, to ordinary English people to whom this Act of Parliament is addressed, no meaning, like the word 'Eureka' or the word "Aeilyton," or if it has any meaning at all, it must be obviously meaningless when used as a trade mark. If it is not obviously meaningless it appears to me that it has not the characteristics of a fancy word. I do not mean to say that there are no English fancy words. I am not going the length which we were invited to go, that a man cannot take any word out of an English dictionary. I do not know what fancy words there may be in the English dictionary. I am not prepared to say there are none. I am not prepared to say that you must go to a Latin dictionary or a Greek lexicon, or anything else; but the word must come up to the characteristics which I have endeavoured to explain." Then he goes on to say that he does not

exclude geographical names, and at the end, after dealing with "electric," he says : "I do not think it matters which in the least. This word is not obviously meaningless, and is not, in my judgment, a fancy word." Then if your Lordship will turn for a moment to the end of the Judgment, on page 645, you will see Lord Justice Cotton says those words are not quite what he meant—"I think I should correct, with Lord Justice Lindley's approval, or his consent, the definition he gave. It should run, not 'obviously meaningless,' but 'obviously not intended to be descriptive.' (Lord Justice Lindley) : Perhaps non-descriptive would be better." Then Lord Justice Lopes, after dealing with the question of the section under which the Act came, about the 10th line down on page 644, says : "It is unnecessary to say anything with regard to the word 'distinctive.' That speaks for itself. With regard to the other expression 'not in common use,' it is not necessary to express an opinion, having regard to the decision that the Court has arrived at with regard to the term 'fancy words.' But now I come to the expression 'fancy word.' It is a difficult thing to define ; but it is necessary that the Court should attempt to define what is meant by 'fancy word.' I adhere to the two definitions I gave of that expression during the course of the argument. I think a word to be a fancy word must be obviously meaningless as applied to the article in question. I think it must be a word fanciful in its application to the article to which it is applied in the sense of being so obviously and notoriously inappropriate as neither to be deceptive nor descriptive, nor calculated to suggest deception or description. Further than that, I think, that the word must have an innate and inherent character of fancifulness which must not depend on evidence, and cannot be supported by evidence to show that in fact it is neither deceptive nor descriptive, or calculated to be deceptive or descriptive. What I mean is that a fancy word, in my opinion, must speak for itself; it must be a fancy word of its own inherent strength. I do not propose to go into the facts of these cases."

There are other cases to which I shall call your Lordship's attention. To apply those tests, laid down in that case, to the word "tabloid," can it be suggested, or could it be heard to be argued in Court, that the word "tabloid" is a word which either is fanciful in its application to the article to which it is to be applied or which is obviously or notoriously inappropriate, and which is not descriptive, or which does not suggest description ? It reeks with description, and was registered because it did. When one comes to consider the history of the trade marks of this firm, one finds they had previously endeavoured to do the act which so many cases have said traders shall not do—that is, map out certain sections of language properly applicable to the descriptions of articles and monopolise them for themselves.

Now, which is the word ? Take, it for the moment, upon the evidence of the Plaintiffs' case itself. The industry of Mr. Thompson has provided us with an even greater field in some respects than we had been able to ascertain ; but the fact remains that the word is so descriptive that it had been recognised in no less than seven or eight dictionaries,

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and has been used, and when I come to deal with the other part of the case I shall lay still greater emphasis on it.

Mr. Justice BYRNE: It is not applied to any particular thing, is it?

Mr. WALTER: I will deal with that point, I agree, my Lord, but how was the word recognised at that time? If the dictionary had put it in at the very moment of its birth had it any other meaning than that which it had as described in the dictionary, table plus oid? One has to test the word. It is no good trying to say, as my learned friend tries to say: "Oh, yes, but you cannot see the meaning in 'tabloid' without the history. We taught people what it meant. We taught the public what 'tabloid' meant." But is that the true test? That is not the question. What would it mean? What would any ordinary person, accustomed to the English language, having seen the word "tabloid," think it meant? Could he have any doubt what it meant? Could he have any doubt that it was of a character that had some relation, some descriptive attribute——?

Mr. Justice BYRNE: Attribute of what?

Mr. WALTER: Of the nature of a table.

Mr. Justice BYRNE: Not of the nature of a tablet?

Mr. WALTER: "Tablet," of course, is all the same, or of the nature of a tablet.

Mr. Justice BYRNE: I cannot say that I accept "table" and "tablet" as the same.

Mr. WALTER: Take "rhomb"—you get "rhomboid," "fungus," "fungoid," "tablet," "tabloid." It is a variant in a way well recognised in the English language. Of the termination of a well-known word having a definite meaning. Let us crave in aid another of my learned friend's witnesses, Sir James Crichton Browne—it is in the examination-in-chief that he mentions it.

Mr. LEVETT: At page 185.

Mr. WALTER: "Can you tell my Lord what the meaning of the word 'tabloid' is in the medical profession?—I do not know what was in the mind of the inventor of the term, but I recollect at first thinking it was derived from 'tabula,' which means a plate, or plank, or table; and the word 'oid.' Then it occured to me if that was the case it must be a compressed term, because it ought to have been 'tabuloid," and I cannot say what was in the mind of the inventor." So that there is no question as to whether or not it comes within the definition of the term in his mind.

Then, my Lord, applying the test in the same case, one has further to see the subject matter to which it is applied. "You are not to take "tabloid" at large, but according to this case you have to test it in relation to that in respect of which the trade mark is registered, and in respect of which it is to be used. You have to take it in connection with that. Can there be for a moment a doubt that "tabloid," as applied to the articles to which they intended to apply the trade mark, and to which they, in fact, applied it, was a meaningless word. It was pregnant with meaning, and that is what they took it for.

They had already attempted to monopolise for themselves for the same object the word 'tablet.' They had registered a trade mark, and admittedly, on Mr. Wellcome's evidence, they had threatened to restrain people from using the word 'tablet,' and finding that 'tablet' was too strong for them, they tried 'tabloid.' They were selling tablets at this time under the trade mark 'tablet.'"

Mr. Justice BYRNE: It was just passing through my mind that it is very difficult to judge sometimes. Suppose you take the word "Welloid." I was thinking of the word "Wellcome."

Mr. WALTER: I should have no hesitation in saying it was a fancy word.

Mr. Justice BYRNE: I should have heard you argue that it meant something to make people well.

Mr. WALTER: I do not think so, my Lord.

Mr. Justice BYRNE: These questions are difficult sometimes.

Mr. WALTER: I agree, my Lord.

Mr. Justice BYRNE: At all events, until you had ascertained that the name was "Wellcome," I should think a great many people would rush to that conclusion.

Mr. WALTER: I doubt it. I should never have thought it.

Mr. Justice BYRNE: Perhaps it is not a good illustration, but it has just occurred to me. I was trying to think how a man must invent a word; he must take very great care.

Mr. WALTER: I say that the word transgresses against every word that is to be found in the Judgment in the Court of Appeal in Van Duzer's case.

Mr. Justice BYRNE: What about "tabloid"?

Mr. WALTER: Yes, but what is the difference between "tabletoid" and "tabloid"? The word "oid" has become in its use in the English language not an additive suffix, but a substitutive suffix. "Fungus" is not "fungusoid," "rhombus" is not "rhombusoid," but "rhomboid" and "fungoid." The termination "oid" is not an additive suffix; the termination "oid" is a substitutive suffix, and is so recognised in the English language.

Mr. Justice BYRNE: Suppose it had been "tabloid"?

Mr. WALTER: I do not know. I am not prepared to say what "tabloid" was, but "tabloid" is, to my mind, a mere substitution for "tablet" and "oid," another English suffix; "table"—"tablet"; "table"—"tabloid"; "tablet" is derived from "table." It is merely of that shape. That is one of the cases.

I think, perhaps, it might be convenient to refer at this moment to the case to which my friend has already called your Lordship's attention, although this was under the Act of 1888, but as showing that this word could not have been registered under the Act of 1888 other than as an invented word. That is the "Solio" case, which is in 1898 Appeal Cases at page 571. Now, what the Court did there was this: Although by Section 10 of the Act of 1888 they had divided up, as it were, the original Sub-section C of the Act of 1883, and given two classes —namely, (*d*) invented words, and (*e*) another class, a word having no

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reference to the character and the quality of the goods, the Courts had said, although the Act did not say it, that an invented word must be a word having no reference to the character or quality of the goods. They had blended together (*d*) and (*e*) under the Act of 1888, and had said that a word was not an invented word, though in fact it was if it had any reference to the character or quality of the goods.

Now in considering whether a word was an invented word, the House of Lords said that "Solio" was an invented word within the rules which the House laid down as to what was an invented word. There are one or two passages to which I want to call your Lordship's attention as showing that even if this was under the Act of 1888, it could not be registered. The first is on page 577, which is in the speech of the Lord Chancellor. This is the last paragraph: "My Lords, I desire to give my opinion with reference to the particular word, and not to go behind it. I can quite understand suggesting other words—compound words, or foreign words, as to which it would be impossible to say that they were invented words, although perhaps never seen before, or that they did not indicate the character or quality of the goods, although as words of the English tongue they had never been seen before." So novelty is not the test of invention. Then he says: "Suppose a person were to attempt to register as a single English word 'cheap and good,' or even without taking so gross an example, using a word so slightly differing from an ordinary and recognised word as to be neither an invented word nor, avoiding the prohibited choice of a word, indicating character or quality. The line must be sometimes difficult to draw, but to my mind the substance of the enactment is intelligible enough, and the comptroller has to make up his mind whether in substance there has been an infringement of the rule. Of course also words which are merely misspelt but which are nevertheless, in sound ordinary English words, and the use of which may tend to deceive, ought not to be permitted, I am satisfied in this case to say that that the word 'solio' is an invented word; but that it does not indicate the character or quality of the goods, and that the decision of the Court of Appeal ought to be reversed."

Now, my Lord, what is the meaning of that? First of all, the fact that the word for the first time sees the light is not the test of invention. Mere variance of known words in themselves descriptive cannot, by the fact that they have assumed an additional syllable or a few additional letters, become invented words. The true test must be judged by the particular word in each case. Now let us see whether there are guides to be found in addition to that from the Lord Chancellor. Will your Lordship turn to the Judgment of Lord Herschell? The passage to which I call your Lordship's attention is on page 581, the last paragraph: "It may, no doubt, sometimes be difficult to determine whether a word is an invented word or not. I do not think the combination of two English words is an invented word, even although the combination may not have been in use before; nor do I think that a mere variation of the authography or termination of a word would be sufficient to constitute an invented word, if to the eye or ears

the same idea would be conveyed as by the word in its ordinary form. Again, I do not think that a foreign word is an invented word simply because it has not been current in our language." Then he goes on to deal with other ones. He says: "A mere variation or termination of a word would be sufficient to constitute an invented word, if to the eye or ear the same idea would be conveyed as by the word in its ordinary form." I say that this word trespasses absolutely against that express exception as to the character of an invented word as laid down by Lord Herschell. I say "tablet" and "tabloid" convey and conveyed the moment the word came into existence the same substantial meaning. It does not rest there, my Lord. May I call your Lordship's attention to page 583, as showing again the contention of the Courts, to Lord Macnaghten's Judgment, the second paragraph.

Mr. Justice BYRNE: In the "Solio" case was there evidence about the word?

Mr. WALTER: Yes, there was evidence in that case that it was related to "Sol," the sun.

Mr. MOULTON: It was about photographic paper.

Mr. Justice BYRNE: Yes, I know that. I only wanted to know whether there was evidence. I see there was evidence. It was suggested to the Appellants on seeing the word "Soho," where the Appellants had done business, so written that it looked like "Solio"

Mr. WALTER: This is the second paragraph in Lord Macnaghten's Judgment: "The object of putting a restriction on words capable of being registered as trade marks was, of course, to prevent persons appropriating to themselves that which ought to be open to all. There is a 'perpetual struggle' going on, as Lord Justice Fry has observed, 'to enclose and appropriate as private property certain little strips of the great common of the English language.' 'That,' he added, 'is a kind of trespass against which I think the Courts ought to set their faces.' And I think the Legislature has set its face against it both in the Act of 1883 and in the Act of 1888. There is little danger of the apprehended mischief if invention be required as a condition of registration. After all, invention is not so very common." That was as showing in the opinion of the House the Act of 1888, as well as the Act of 1883, was intended to prevent any such thing as we say is occurring here. Now Lord Shand. He says on page 584: "I agree with your Lordships, and particularly with what has been said by my noble and learned friend Lord Macnaghten, in thinking, especially after the decision to be given in this case, that the Comptroller-General will be fully warranted in taking care that there shall not be admitted under the guise or cover of words called 'invented' by the applicant, words really in ordinary use, which might, in a disguised form, have reference to the character or quality of the goods. There must be invention and not the appearance of invention only. It is not possible to define the extent of invention required, but the words, I think, should be clearly and substantially different from any word in ordinary and common use. The employment of a word in such use, with a

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diminitive or a short and meaningless syllable added to it, or a mere combination of two unknown words, would not be an invented word ; and a word would not ' invented ' which with some trifling addition or very trifling variation still leaves the word on which is well known or in ordinary use, and which would be quite understood as intended to convey the meaning of such word."

Now, my Lord, I say on the authority of the " Solio " case this word could not even have been registered under the Act of 1888, for it transgresses against every one of the distinctive characteristics of an invented word as laid down by the House of Lords. It is in evidence that tablet was a word in common use to describe articles used in pharmacy. It had been used for many years by Messrs. Wyeth, it had been used for many years by the Plaintiffs themselves as descriptive of goods which they were vending as the agents of Wyeth, and then they register that word as a trade mark—use that word as a trade mark in connection with the goods they sell—find that it would be impossible for them to sustain that word and vary merely the termination of the word that they have hitherto used by a known variant in the English language altering in practically no sense the word which they had previously used, and therefore I say, my Lord, transgressing every rule laid down by the House of Lords in the " Solio " case. Therefore, if it were necessary to argue the question under the Act of 1888, I say they have no *locus standi* here, or justification to support their registration even under that Act, but that, as I have pointed out, is not the Act under which they did register.

Mr. Justice BYRNE : The Bovril case was under the Act of 1883, was not it ?

Mr. WALTER : Yes, I am coming to the Bovril case. I will take now. No, my Lord, " Bovril " was registered under the Act of 1883.

Mr. Justice BYRNE : That is what I suggested under the old Act.

Mr. WALTER : That is a very very suggestive Judgment. The " Bovril " case is in 2 Chancery, 1896. Lord Justice Lindley, first of all, deals on page 605 with Van Duzer's case. Then he says at the last line on page 605 : " I agree that the Court went a step further in the Somatose case "—which was under the Act of 1888—" I thought it was an invented word, and the other members of the Court thought it was not. I thought it was not descriptive ; they thought it was. That is all. But I disregard that case, except for this purpose, namely, to show that that was the ground of the decision. It would be altogether wrong for us to take the Act of 1883 and substitute for the words ' fancy word ' a ' non-descriptive word.' That is not the language of the Legislature. But I agree that a word which describes the article to which it is applied will not do." This was after the decision in the Somatose case. " I agree that a word which describes the article to which it is applied will not do. Let us, therefore, ask ourselves whether ' Bovril ' is a descriptive word. To my mind—it is not descriptive, notwithstanding Mr. Bower's very ingenious argument. He tries to make it out to be a descriptive word, not by taking the word, but by taking a little bit of it, and he says that because ' bov ' may have some relation,

and does have some relation to 'ox,' therefore 'Bovril' describes—what? I do not see that it describes anything at all. Does it cease to be a fancy word not in common use? If it is so descriptive as to cease to be a fancy word not in common use, well and good; but if the description is only to be got at by the A ingenious suggestion that 'Bov' must mean 'ox,' we must ask what the whole word means. No one knows—no one ever heard of it; I have not the slightest idea what 'Bovril' really means as a word. I followed Mr. Bower's argument, and am quite alive to the fact that it has been applied to extract of meat. At the time when this word was first coined B can one say more than this: that it had some relation, or might have some relation or application to an ox? Is that descriptive so as to destroy its character as a fancy word? The real truth is that this is a fancy word not in common use. I think the test suggested by Mr. Moulton is a correct one. I think C it is eminently and purely a question of fact. Now, I ask myself this: "Supposing that a jury were asked to say whether, on November 2, 1886 (that was the date of registration) 'Bovril' was a fancy word not in common use, and supposing they said, upon a direction from the Judge, which, I think, it would be the duty of the Judge to give, that if they were D of opinion that it really intelligibly described the thing sold, it would not do, could they, with that direction, reasonably say it was not a fancy word not in common use? I do not think they could." There is no word "ril"—there is no such suffix in the English language. There is no meaning to be attached to the word "Bovril." E What meaning is there? It is no known suffix, it is no mere variation of the termination of a known word by a known suffix. In addition, of course, there was evidence in that case that the word "Bovril" was used for potato pies and other things. I am not on that question at all now; I am on the question: at the date the word was invented, could anyone F say that word had any meaning?

Mr. Justice BYRNE: If it had been "Bovoid" you would have said the contrary.

Mr. WALTER: "Bovoid" would have been about on the line, although I very much doubt—there is no word "Bovoid." It is a line G ball. I have not considered "Bovoid."

Mr. MOULTON: Like "Sheepoid."

Mr. WALTER: There is no word of whose termination it is a variant. There is no word "Bov" in any language. There is no such word. However, that is not a question we are called upon to try. "Bovril," at the H time it was registered, had by no conceivable stretch of imagination a meaning. "Bov." might be suggested, as was suggested in the case, as having something to do with an "ox," but what did "ril" mean? It had no meaning—there is no known meaning. Nobody can come and say that is the mere addition of an ordinary suffix, it is a known variant, I it is a thing recognised in the English language as a variation of the termination. You cannot say that. Now my Lord, that is what Lord Justice Lindley says. Now look at what Lord Justice Lopes says at the bottom of page 608. "Now to ascertain whether the word 'Bovril' is a fancy word, I test it in this way, the way with which I am most familiar.

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I say to myself, what would an intelligent Jury say if they were asked whether 'Bovril' was a fancy word? If I had had to try the case I should have told them that they must keep in their minds that this word was placed upon the register in 1886, and that they must regard it as it stood at that time. I should have told them that to be a good fancy word it must be non-descriptive and meaningless as applied to the article to which it was intended to be applied, and if I had so told them I am confident they would have come to the conclusion that the word was not descriptive." If any intelligent Jury in England were to be asked on the 23rd of April, 1884, whether as applied to tablets—to articles of the shape of tablets—tabloid was a word which was non-descriptive and meaningless, would any Jury be able to say so? I ask your Lordship confidently to say no. As I say, the test is not to take the word at large, but you have to take the word in view of that to which it is to be applied, and taking that test, what answer is there that can be given to the question? It is descriptive. It is not non-descriptive, and it is not meaningless. If your Lordship had been asked what was the meaning of "tabloid" on the 23rd of April, 1884, I think your Lordship would have quarrelled very much with anybody who said you could not understand what the meaning of tabloid was if you were told it was to be applied to a little article such as we use. That is the test.

Mr. Justice BYRNE: You say first of all I should have to consider what the subject matter was.

Mr. WALTER: Certainly.

Mr. Justice BYRNE: Before I could form the shadow of a meaning. For instance, I have been thinking about it. Suppose I heard the word "tabloid" used as a description of a portion of a microscope—some kind of plate—I should have a vision of something very different indeed. The only connection with table it would have in my mind would be something to put objects on—a flat shape, probably oval or oblong. I can conceive cases in which "tabloid" would be a perfectly good trade mark. I do not say "tabloid" cannot be a perfectly good trade mark for certain goods.

Mr. Justice BYRNE: Supposing it was used about cells. I am not talking now of cork tree cells—supposing I was told by somebody microscopical objects were tabloid-like, or they were tabloids. The impression produced on my mind would be that I should rather expect to see, though I do not quite know which, either a circular or an oblong flat kind of disc. I know in the cork one which is a more modern use of the word it applies to a certain thing which is shaped more like Messrs. Burroughs & Wellcome's article.

Mr. WALTER: Under the Act of 1888 "a word or words having no reference to the character or quality of the goods"—the word could be used perfectly well if applied—one has always in these trade marks——

Mr. Justice BYRNE: Wait a moment. You say these fancy words apply to the object, do you.

Mr. WALTER: Certainly, that is the sole test; it is the test which is laid down in every one of the Judgments to which I have called your Lordship's attention. "I should have told them that to be a good fancy

word it must be non-descriptive and meaningless as applied to the article to which it was intended to be applied"—that is page 609, the 7th, 8th and 9th lines. It is the only test. So also in Lord Justice Lindley's Judgment precisely the same: "Upon a direction from the A Judge, which I think it would be the duty of the Judge to give, that if they were of opinion that it really intelligibly described the thing sold it would not do"——

Mr. Justice BYRNE: Supposing it were applied to a liquid medicine?

B Mr. WALTER: But it is not.

Mr. MOULTON: It is registered for them.

Mr. WALTER: It has never been used for a liquid medicine, and you have other marks for them. One has to see what you use it for and what it was intended for. It was intended to be used, and never has been C used except upon compressed tablets—never for anything else. That was the thing for which it was registered, and if in the class of things for which it is registered it is descriptive, then I say it offends against every decision that has ever been given under this Act. It is in terms within all the rules laid down for consideration by the Courts what is or is not a D fancy word, and, therefore, it cannot stand.

Now, my Lord, the matter has been also considered in other cases. "Reversi," my Lord, was another case on this. That was in the Waterman's Trade Mark in the 39th Chancery Division, at page 29.

Mr. Justice BYRNE: There were special circumstances in that case.

E Mr. WALTER: Yes, my Lord. It is all on the same point. Lord Justice Fry, at page 38, says: "I think, moreover, that 'Reversi' was not a fancy word for this further reason. The Plaintiff had invented this new game, to which he gave the name 'Reversi.' He had a very large sale for this game, and the consequence was that the word 'Reversi' had amongst F persons conversant with games come to describe this particular game. Now that which is only the name of a thing cannot, it seems to me, be a fancy word with regard to it. The word 'spade' describes the thing. You can never take the word 'spade' and call it a fancy word for the thing." It is only pointing out, exactly the same as the way in which G both Lord Justice Lindley and Lord Justice Lopes say, that a Jury would have to be directed, as they would direct themselves, namely, as applied to the particular article, is it a fancy word?

My Lord, one always likes one's opponent to write a book, it is so useful; and at page 170 and 171 of Mr. Kerly's book there is a most H admirable summary, and one finds that only four words have been allowed as fancy words: "Alpine," "Mazawattee," "Oomoo," and "The Lawford," and "Alpine" was subsequently disapproved by the Court of Appeal.

Mr. Justice BYRNE: Just run down those names that are there.

I Mr. WALTER: "Alpine" was objected to, "Beatrice" for shoes, "Ben Ledi" for whisky.

Mr. Justice BYRNE: All those are cases of taking actual words. "Bökol" was not, I remember that; but that was a Norwegian word.

Mr. WALTER: "Britannia" for soap; "Brymbo" for iron;

Nov. 25, 1903 — "Carnival" for cigarettes; "Electric" for velveteen; "Compactum" for umbrellas; "Electroid," to which I have already called your Lordship's attention, an unknown word, not found in any dictionary, but a mere variant.

Mr. Justice BYRNE: I do not know what may have been found if there had not been the evidence. A

Mr. WALTER: There was evidence that it was not there, and I have looked up the dictionaries since, and there is no "electroid" to be found in them.

Mr. Justice BYRNE: But there was the evidence of the gentleman who invented the word. B

Mr. WALTER: When I come to that, my Lord, that has been supplied to us galore by the Applicant in this case. He has told us what "tabloid" meant, what he intended it for, and everything. Then "Emollio" for cream; "Emolliorum" for dubbing. I do not know that word. That is not Latin. There is no word "emolliorum" in any language. "Friedrichshall" for water, "Granolithic" for stone. "Herbalin." There is no such word as "herbalin." "Hunyadi Janos" one can understand. "John Bull" for beer; "Jubilee" for note paper; "Kokoko" for cotton goods; "Manor" tinplates; "Melrose," "Monobrut," "Red, White and Blue," "Sanitas," "Self-Washer," "Triticumina"—that is the case I propose to call your Lordship's attention to. "Washerine"; there was no word "washerine" and never was such a word. The "ine" is a very well-known variant, a well-known suffix. C D

Mr. Justice BYRNE: There you have the complete word, "washer." E

Mr. WALTER: Now, my Lord, "Triticumina" is a very useful case as helping us in this matter. That, my Lord, is in the "15th Reports of Patent Cases," page 1. The passage to which I propose to call your Lordship's attention is in the Judgment of Mr. Justice North. On page 15, my Lord, he is dealing with the decision of Lord Justice Lindley and Lord Justice Cotton in Van Duzer's case, and he says at line 35: "There always may be a question in any particular case in what way a particular word is used. The 'Bovril' case, one of the most recent cases on the subject which was referred to, was one in which the Court came to the conclusion that the word 'Bovril' was not descriptive, but the word in each case must be dealt with on its own merits; and the reason why I cite Van Duzer's case is because it lays down the law—the principle to be applied with respect to each word, as to whether it is or is not a proper trade mark. The phrase used is 'obviously not intended to be descriptive'"—that is quoted from the decision in Van Duzer's case—"The conclusion I come to is that it is obviously intended to be descriptive"—that is "Triticumina"—"and therefore it is the exact opposite of what is a proper trade mark. I do not think we need go farther than to look at the description of it contained in the advertisement of the 30th of October. I have not had the advantage of Mr. Meaby's or Mr. Farnworth's evidence upon the point; but, reading the advertisement that their firm published shortly afterwards, it is quite clear what 'Triticumina' means. F G H I

It is derived from ' Triticum '—wheat ; which the firm has taken as their telegraphic word, and as their short address. Then to that word ' ina ' is added. There are many cases which show that the mere addition of such a suffix as that is not sufficient to make the word to which it is added a fancy word, and, more than that, the word here is obviously descriptive. Just look at this advertisement : ' Important for children and infants, and for all who require strengthening food. Meaby's " Triticumina " patent entire wheat meal bread and prepared wheat meal.' " Then he reads various things as showing the user of the word there to describe the article. I say there again there is another authority showing that a mere suffix will not take the case out of the character of being descriptive.

Now, my Lord, I go to the " Emollio " case, which is in the 6th Reports of Patent Cases at page 180, before Mr. Justice Kay, as he then was. My Lord, he deals first of all with the various decisions, and then at page 183, line 15, he says : " The original decisions on that point occurred in cases where a person having used a word of that kind sought to restrain all other persons from using the same word, and failed in every case where the word was descriptive of the thing, and had become so attached to the thing which anyone might make, that it was the proper word to describe that thing. It is deserving of very careful consideration, whether in a case of this kind, where you have a descriptive word, a word which describes the effect of the use of the particular article to which it is applied, that word can properly, within the meaning of this clause, be considered as a trade mark." I cite that only as showing the way in which it is applied.

Now, my Lord, there are one or two recent cases to which I will call your Lordship's attention as showing how the word has been applied. There is the case of " Savonol," which was under the Acts of 1883 to 1888. That, my Lord, is reported in the 17th Reports of Patent Cases, Field v. The Wagel Syndicate, page 266. That was a decision of Mr. Justice Buckley's, in which he held that the word " Savonol " was an invented word, and I will show your Lordship how and why he holds it. What was it used for ? Soap. This was under the Act of 1888, and he expressly decided on the ground that there was no termination " ol " known ; that it had no meaning. I am only taking it as showing how the interpretation has gone on. On page 271, in speaking of the " Satinine " case, at line 40, he says : " I understand Lord Herschell there to mean that ' Satinine ' might be objectionable ; that is to say, because it is not really invented ; it is only taking the word ' Satin ' and appending to it the affix 'i-n-e,' which means something. Many words which end in ' i-n-e ' mean of the nature of or resembling. You speak of a crystalline lens, a lens, that is made of crystal. There are many other words such as ' maltine '—that is an invented word I suppose—which means of the character of malt, or having the nature of malt, and ' Satinine ' might mean, if applied to starch, the product there in question, a starch which gave a satin-like finish to the goods. That is what I think Lord Herschell is referring to." Then if your Lordship will turn to page 272 he deals with the Solio case, and at line 16, after reading Lord Macnaghten's opinion, he says : " I

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pause there before reading the sentence from Lord Shand's opinion, on which Mr. Cutler relied, to say that, as regards this particular word 'Savonol,' to my mind it has no meaning at all. I am not acquainted with the affix 'ol' to another word to express some sub-meaning of the principal word. 'Ol' appended to a word means nothing as far as I know." A

Mr. Justice BYRNE: Yes. The difficulty is that it has struck different minds so very differently; the truth is that so much depends upon a man's particular reading and a man's particular education.

Mr. WALTER: Yes, my Lord. Then will your Lordship notice how the report goes on: "Mr. Cutler put to the witnesses words like 'Savonette'—a totally different thing as it seems to me. 'E-t-t-e,' as one knows, is a form of diminutive in the French language. 'Savon' is soap; 'Savonette' is the diminutive of soap in some sense or other, but 'Savonal,' to my mind, means nothing at all. I should be entirely non-plussed if anybody asked me what 'Savonol' means. Then it is said that part of the word is 'Savon,' which we all know is the French for soap. What does Lord Macnaghten say? He says: 'If it is new it is no objection that it may be traced to a foreign source'—which you do if you think it is something to do with 'Savon'—'or that it may contain a covert and skilful allusion to the character or quality of the goods.' If the word 'Savonol' does suggest to the mind of the hearer 'Savon,' and if he happens to be a hearer who knows French—many of the people who buy soft soap I take it do not know French—he might possibly think there was a covert and skilful allusion to the character and quality of the goods." Then at the end of the Judgment he says: "It appears to me that 'Savonol' is an invented word. It is a word which has in itself no meaning at all, unless you derive a meaning from the fact that it contains the word 'Savon,' and so it appears to me it is within the passage." So that his Lordship, Mr. Justice Buckley, would have thrown out "Savonette" as being a word with a known derivative—a known affix, but "ol" being an unknown thing, and being an unknown affix or suffix in this language, he says, therefore it is within the Solio Judgment, but that if it had been "Savonette" he should not have said so. That, my Lord, is the Savonol case. I did intend to refer to the Uneeda case, but I do not think that it is necessary. B C D E F G

Mr. Justice BYRNE: No, that is only a mis-spelling.

Mr. WALTER: Yes, my Lord, that was a case of mis-spelling.

Mr. Justice BYRNE: I do not think there is any question about that. H

Mr. WALTER: There are many many other cases which I do not intend to trouble your Lordship with. I say that, taking the whole of the decisions given on that section of the Act of 1883, that this trade mark offends against every one of those rules. It was registered to be applied, and was, in fact, applied to what had hitherto been known as tablets. It was properly descriptive of those goods, and, therefore, is not a distinctive fancy word. I

Mr. Justice BYRNE: It was to be applied to a particular variety of what were well known tablets.

Mr. WALTER : No, my Lord, according to their case they have varied them in shape.

Mr. Justice BYRNE : But it was not to be applied only to these medicines.

A Mr. WALTER : Yes, that is so—to be applied to the particular goods which had hitherto been by the same makers called tablets—applied to medicinal tablets. Under those circumstances I ask your Lordship to say that it trespasses against the Act ; and that the mark, which must be tested as of the date when it was registered,
B cannot stand. It is a word compounded of words previously used, with known suffixes, having a definite meaning, for it only means " of the nature of," or " of the shape of." There is no other meaning attributable to " oid." Therefore, it was a word that was incapable of registration.

C Mr. Justice BYRNE : To people who are to be presumed to be most acquainted with it it does not convey that notion. You have one witness, certainly, whose evidence was rather more in your favour than some.

Mr. WALTER : I have not analysed the evidence yet for the purpose
D of calling your Lordship's attention to it, but I think I shall be able to satisfy your Lordship that there is hardly one witness who does not bear out that contention.

Mr. Justice BYRNE : Well, I certainly was rather struck with the evidence of one witness ; I think it was a gentleman from Ireland.

E Mr. WALTER : Was it Sir William Thomson ?

Mr. Justice BYRNE : Yes, that was the one.

Mr. WALTER : When it came to be tested by cross-examination, I think that that nervousness of attributing a meaning to " tabloid " disappeared a good deal. Your Lordship will find that
F at page 179 of the Shorthand Notes. After commencing by showing a little difficulty about it at Question 2632, he agrees that it suggests to him that they are " compressed bodies "—that they are " solid bodies." So, little by little, we get the meaning out. I read Question 2633 : " We can get so far that it does convey the idea of impression to your mind ?
G —Oh, yes. Q. Is it a large thing ?—It varies in size. Q. I mean is the largest large ?—I do not know what you call large. I do not know what you wish to convey to me by large." But, my Lord, I am not proposing at the present moment to call your Lordship's attention to the evidence.

Mr. Justice BYRNE : Quite so, I am afraid I was leading
H you away.

Mr. WALTER : I was proposing to tabulate the evidence at a later date and then call your Lordship's attention to it.

Mr. Justice BYRNE : In tabloid form ?

Mr. WALTER : Yes, my Lord, in tabloid form.

I Now, my Lord, that is the case as regards the motion for rectification of the Plaintiffs' trade mark.

I will now deal with the case which is made against me. First of all as regards trade mark, I say there is not any evidence, or an attempt to present any evidence on the ground of the infringement of trade mark. I

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mean apart altogether from the question of passing-off, because I am upon the subject of the infringement of trade mark. I say again that there is no evidence. To what have I applied any name? Neither by label on the goods themselves, by description in writing, or in any other way have I used the word "tabloid." It is dead in the face of authority. There has never before been such a case of an attempt to prove infringement of trade mark by verbal evidence. It is foreign to every notion of trade mark. Infringement of trade mark is applying something to the goods. This sort of thing has been attempted before but it has always been ruled out. Your Lordship will remember the Rugby Portland Cement case which is reported in the 8th Reports of Patent Cases at page 241, and your Lordship will see that it is a misconception of what trade mark means to even suggest it. That is the judgment of Mr. Justice Vaughan Williams, as he was then. Now that was a case where there was a trade mark for cement owned by the Rugby Portland Cement Company, and there was any amount of evidence that "Rugby cement" meant their goods, and someone had written a letter and asked for "Rugby cement," the old "pennyworth of soap" order, that we have heard so much of in this case, written on a piece of paper. At page 245, line 35, your Lordship will see this." Now, let me deal with the case as it has been put forward by the Plaintiffs. The Plaintiffs' case complains of two matters. First, they say that they have a trade mark, and they say with regard to this trade mark that the Defendants have infringed it. I am, for my own part, not at all sure that you can prove an infringement of a trade mark without proving that the Defendants have imitated the Plaintiffs' trade mark upon something capable of receiving the impression of the mark. Either the material itself or the paper which is used, or the sacks, or bags, or boxes, or whatever it is that the material is put into, I should have thought must have been imitated to constitute an infringement of a trade mark. I am only dealing now with a matter which is not essential to my decision in this case, because I am prepared to decide the case, and I am going to decide the case upon another ground; but at the same time, I think it my duty to say that, as at present advised, I do not think that evidence such as was given in this case is any evidence of infringement of a trade mark, that evidence being this—I am assuming for this part of the case that the Plaintiffs have got a proper trade mark registered by them—evidence that some one in writing to order goods uses a word which appears on part of this trade mark, that is to say, the word "Rugby" which appears on the strip which connects the two sides of the garter, which is part of the trade mark. Some one writes to order goods describing them by this word "Rugby" and then the Defendants who receive that order execute it. For my own part, I do not believe that that is any evidence whatever of an infringement of the Plaintiffs' trade mark. Not being myself from my practice in the other division very familiar with this class of cases, I invited Mr. Willis Bund to call my attention to any case which had ever been decided in which evidence of that character had been held to be evidence of the infringement of the

trade mark, and he very frankly told me that he was unable to cite me any such case. I may say, my Lord, I have looked also, and there is no such case." It never has been decided that you can infringe a trade mark except by putting the mark, or a substantial part of it, on the goods themselves. No such evidence is tendered, nor has there been any attempt to tender it in this case; therefore, I say that there is no evidence whatever of any infringement of trade mark, and, so far as the case of infringement of trade mark goes, I ask your Lordship to dismiss the case, there being no evidence whatever of any infringement of trade mark.

Now, my Lord, that is the authority upon the subject, and it has never been doubted. I submit it is a misconception. Trade mark is Statutory. Trade mark is founded on the mark on the goods, or on something which envelopes, or on something connected with them. There is no evidence of infringement of trade mark at all. All their evidence, as was pointed out by the learned Judge in that case, is relevant to the issue of passing off, and nothing else. Passing off is much wider, and is not bound by the same rules which apply in the case of the infringement of a trade mark. Therefore, so far as that is concerned, I say that no evidence whatever has been given here. For that I refer again to the very excellent work of my learned friend, Mr. D. M. Kerly; I have read every passage relating to it, and it is impossible to find any such suggestion, and, in fact, I got from his excellent work the authority which I have quoted to your Lordship as to what infringement is.

Now, my Lord, we come to the next part of the case, namely, the passing-off case. Here again the case has been fought in a way which I think I may say is foreign to any case I have ever heard fought or discussed in the Courts before. What is the case that has been put before your Lordship? A case in which a virtue has been made on behalf of the Plaintiff that he has done nothing to educate the public into the knowledge that "tabloid" was connected with his particular goods; in which he has never advertised to the public or taken measures to inform the public.

Mr. Justice BYRNE: Before you go to that, Mr. Walter, there was one point that occurred to me, but I shall take you off what you are on. You pass on at the present.

Mr. WALTER: If your Lordship pleases. Now what is their case? Their case is this: That not the public, but the medical profession, wholesale chemists and retail chemists, know that the mark "tabloid" means the goods of Burroughs, Wellcome & Co. All their evidence is directed to that point. The *ratio decidendi* on every decided case is protection of the great public, so that the ultimate purchaser who expects to receive the goods of a particular person shall not receive goods of another person. Before I go into this question and refer your Lordship to the authorities, which, I shall submit, show that they have absolutely failed to come up to the standard which is required by the cases to make out a case of this description, let me for a moment call attention to their own use of the word "tabloid." From the first they commenced to use

Nov, 25, 1903 — the word as a purely distinctive word. First of all I find in 1885—and this is the first time in their advertisements where it occurs—at page 116 of the "Chemists' and Druggists' Diary," in an open letter to the drug trade, he is talking about pepsin prepared according to the prescription of Mr. Fairchild: "The dose is from one to three grains, and is best A given in powder or in the form of the pepsin tabloids, which are one grain compressed tablets evidently coated with sugar." That is the first reference we find in his literature to the word. Is that descriptive? "Pepsin tabloids which are one grain compressed tablets evidently coated with sugar." Then, without wearying your Lordship with a whole lot B of these things, let me refer to the "Chemists' and Druggists' Diary," 1887, page 112. In describing these very things he puts at this time "tablet." Your Lordship will see on the page is the trade mark: "Trade mark tablets." "Compressed chlorate of potash. Tablets —trade mark" is in the first column, and then looking at the C top of the second column we find "hypodermic tabloids," and in brackets "[soluble compressed hypodermic tablets]." Then reading on: "These tabloids are freely soluble"—and it goes on to describe all the qualities of "tabloid"—"and convenient, perfectly preservable, absolutely accurate in dosage, certain and rapid of action, free from contamination D or deleterious change, and their effects are more certain and reliable than those of solutions. They may be employed for ophthalmic, nasal, laryngeal and endermic application, as well as for hypodermic injections." Then he quotes from the "Lancet." "They are very soluble, and not at all irritating. Their convenience and utility will E at once be apparent on examination." They are sailing under "tablets" at this time as a trade mark. It is used as being purely descriptive. Now let us look at the year 1888 of the "Chemists and Druggists' Diary," at page 119, to begin with: "The tabloids of compressed drugs in accurately divided doses greatly lessen F the risk of error by nurses and patients and afford an unchangeable and acceptable form for administration," and so on. That is at the top of the second column.

Then, my Lord, if you will turn to page 118, you will see "tabloids of compressed drugs": "Some of these tabloids are intended for their G local effect upon the throat, as chlorate of potash, and are compressed very hard, and dissolve very slowly, while some are for internal administration," and so on. "Tabloids of compressed chloride of potash"—and a picture is given of the exact size, showing what a tabloid is.

Mr. Justice BYRNE: The voice tabloids are very beautiful little H discs.

Mr. WALTER: Yes, my Lord, they are. "Tabloids of compressed chlorate of potash, five grains in each," and so on. Then underneath, in that very passage, "tabloids of compressed chlorate of potash," they quote the "Medical Press and Circular" as praising them up on account I of their very small size. "Chlorate of potash is an agent of acknowledged value," and so on. "A single tablet," under their very advertisements of "tabloids," they describe it as "tablet."

Mr. Justice BYRNE: I see their first column has got "pinol."

Mr. WALTER: Yes, my Lord, that is another word; and I think there is another reference there.

Mr. Justice BYRNE: I was only thinking about the termination "ol."

A Mr. WALTER: In that same book, on page 123, we read to all and sundry, "Greetings"—this is a kind of Christmas card from Messrs. Burroughs & Wellcome. "Having made important improvements in our machinery and apparatus, and having greatly increased our manufacturing facilities, we are now enabled to offer very great reductions in the price B of several of our articles including our tabloids and tablets of compressed drugs. The advantages of these compressed goods"—and so on. Then we have all the advantages of which we have heard so often. "The prices of tabloids of soluble quinine are now so slightly in advance of the cost of the crude drug as to render this form profitable for dispensing." C That is the way in which this thing is started; we are now at 1888.

Mr. Justice BYRNE: There is one thing with regard to that greeting—tabloids and tablets are used to distinguish one from another.

Mr. WALTER: But both tablets and tabloids are described as compressed drugs, my Lord.

D Mr. Justice BYRNE: Yes, they are.

Mr. WALTER: I think I called your Lordship's attention to the top of page 117.

Mr. Justice BYRNE: Yes, you did.

Mr. WALTER: I do not think I read right to the end of it, but E I see they say this: "The tabloids of compressed drugs in accurately divided doses greatly lessen the risk of error by nurses and patients, and afford an unchangeable and acceptable form for administration; and at the same time these medicines are so compact and portable that patients travelling or attending to business, professional or official duties can easily F carry the remedies prescribed in the waistcoat pocket." There are a great number of others to which I can go on; but it has not been denied that that is the type of advertisement with which they commenced, they having "tablets" at that time as their trade mark. Then a change came over the scene.

G Mr. Justice BYRNE: They had "tabloids" as well then, did they not?

Mr. WALTER: I quite agree, my Lord; but I am not on the trade mark part of the case; I am now on the passing-off part of the case. They introduced this thing to the world by using it purely descriptively, H and went on for years telling you what a "tabloid" was, what its virtues were, how convenient it was for putting in your pocket, and how easy it was to administer doses in tabloids; and they tell you that tabloids are compressed drugs and they sell tablets and tabloids at the same time. Then, after a considerable period of time, as I say, a change comes over I the scene. "Tabloid" is in inverted commas first of all, with "Trade mark" on either side of it. Then it becomes "Tabloid Products" and "Trade Mark," and letters fulminating thunder at all and sundry; the druggists go out threatening all the pains and penalties of the law if

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anybody ventures to infringe the trade marks of Messrs. Burroughs & Wellcome.

Now, my Lord, roughly and very shortly, all I need call attention to at the present time is the basis of the case which they seek to make out that the word "Tabloid" has become, not meaning an article, not meaning a compressed drug, but meaning the goods of Burroughs & Wellcome. I say that it means nothing of the kind. The trade and everybody—for I put the question to them all—have known that "tabloid" is the trade mark of Messrs. Burroughs & Wellcome—that they have a monopoly right, which they give notice to all and sundry they intend to enforce that the word "tabloid" has not lost, as they are bound to establish, its primary meaning, and that to all the public "tabloid" means, in its primary meaning, an article and not the goods of Messrs. Burroughs & Wellcome.

Mr. Justice BYRNE: Is that quite correct?

Mr. WALTER: I am going to call your Lordship's attention to it. It must have lost its primary meaning.

Mr. Justice BYRNE: That is what I was thinking of.

Mr. WALTER: The House of Lords are absolutely clear on the point. It must have lost its primary meaning, so that all and several, when they hear "tabloid" must know at once that it means the goods of Messrs. Burroughs & Wellcome.

Mr. Justice BYRNE: As applied to a particular thing?

Mr. WALTER: Yes. The authorities are quite clear on that, my Lord; otherwise it prevents me using the word.

Mr. Justice BYRNE: It seems to me, as well as I recollect the case of Stone Ales, that "Stone" never lost its original meaning as meaning a town.

Mr. WALTER: "Stone Ales" was the word that was prohibited; not "Stone." I will call your Lordship's attention to that case. "Stone Ales" was what was prohibited.

Mr. Justice BYRNE: All I was putting to you was that the word "Stone" had no meaning without the word "Ales."

Mr. WALTER: Certainly, my Lord.

Mr. Justice BYRNE: That is the distinction between "Stone Ale" and "Stone Ales." "Stone" had no meaning without the word "Ales."

Mr. WALTER: What was held was that "Stone Ales" meant goods of a particular person, and "Stone Ales" had ceased to have any other meaning. There was no person to whom you could address the word "Stone Ales," who had any other meaning for it except with regard to the ale of a particular firm. Let me for a moment, before doing so, call your Lordship's attention to the nature of the evidence they have given as supporting what I have. Doctor after doctor they have called has admitted that the public liked their medicine in tabloid form. What does that mean? Doctor after doctor has admitted that. At least one of their druggist witnesses, not one of whom had looked through his orders, admitted that "tabloid" had been used in a sense which did not mean goods of Burroughs & Wellcome, and he said he was not going to keep a patient waiting for a drug which he knew the patient wanted, and

he supplied goods which were tabloids. When I come to my evidence— we have been through our books, and from one alone I shall produce over 400 written orders from the public for tabloids, not one of which was the goods of Messrs. Burroughs & Wellcome. I shall produce A prescription after prescription from doctors ordering tabloids, not one of which were the goods of Burroughs & Wellcome, and I shall produce from nearly all my chemists large bundles of orders for tabloids, and I say that if any of those druggists who have been called before your Lordship had looked through their orders, they would have been able to find B precisely the same number. They have not. I shall establish beyond question that the word "tabloid" means nothing to the public except the particular shape of the goods, and nothing else. I shall call doctors who will say that they use the word "tabloid" in that sense, and they use it constantly in their practice in that sense, and never intend the goods of C Burroughs & Wellcome unless they put "B. & W.," and they have always used it in that sense. One of the cases I will call your Lordship's attention to upon this very passing-off case. The fact that people have not cared to face the expense and wear and tear of a lawsuit is no evidence of a monopoly of the right. It D is some evidence, but it is no conclusive evidence of a monopoly of the right, and knowing the size and importance of the firm of Messrs. Burroughs & Wellcome, and knowing that they have an established trade mark, and that it means the array of heads of the profession whom your Lordship has had the privilege of seeing before you, and who I hope some- E body else has to pay for, they naturally do not care about the expense of attacking such a firm.

Mr. Justice BYRNE: They do not hope that the expenses of all of them will be paid.

Mr. WALTER: That is so, I know. I have indicated the points, F my Lord. I have not attempted to deal in detail with their evidence. Now let me come to the cases to which I wish to direct your Lordship's attention on this question. First of all, perhaps it would be better to go in order. There is the Glenfield Starch case. That is in 5 English and Irish Appeals, at page 508, Wotherspoon v. Currie. Your Lordship G doubtless remembers the facts in that case.

Mr. Justice BYRNE: I have had them once or twice.

Mr. WALTER: Glenfield was a little village of 60 inhabitants; it really was not a village at all, but Mr. Wotherspoon made starch there and then Mr. Currie took a small place and started to H make starch. He did not label it, but he called it "The Royal Palace Double Refined Patent Powder Starch, Currie & Co., starch and cornflour manufacturers," and "Glenfield" in large letters at the bottom. He did not call it "Glenfield Starch," but the other was Glenfield Starch, and it was in evidence that it had become a name known on the market. I do I not know that I need read through the whole of the passage. On page 514 there is this: "Therefore the name 'Currie' ought to be distinct, as I believe it is, and the name of the article again, if it has acquired a name, should not by any honest manufacturer, be put upon his goods if a previous manufacturer has by applying it to his

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goods acquired the sole use of the name." Then a little further on, the first paragraph on page 515, there is this : " That being so, it appears to me that the Respondent, if he was an honest manufacturer setting up in business, would take great care, and all the more because he was setting up in business in a place where Glenfield Starch had been manufactured and sold to disconnect his name with any name which had become exclusively a designation of an article manufactured by the Appellants." It is " exclusively " there. Now your Lordship will see Lord Westbury says this : " I have very few words to add, and they will rather be directed to a summary of the conclusions arrived at by my noble and learned friends than any addition to anything they have stated. I take it to be clear, from the evidence, that long antecedently to the operations of the Respondent, the word 'Glenfield' had acquired a secondary signification or meaning in connection with a particular manufacture—in short, it had become the trade denomination of the starch made by the Appellants. It was wholly taken out of its ordinary meaning, and in connection with starch had acquired that peculiar secondary signification to which I have referred."

Now, my Lord, why is there this wholly taken out? Because you cannot stop a person who is using it in a sense in which it is known, and in which it is used. You cannot stop a person using it in that sense if it properly has that meaning. Therefore, as applied to starch, "Glenfield" had lost entirely its meaning. Anybody to whom Glenfield starch had been supplied knew at once that was not starch made at Glenfield, because it was no longer made at Glenfield. They had moved to Paisley and the goods were being made at Paisley, but " Glenfield Starch " had been taken entirely out of its ordinary meaning.

Now, my Lord, the next case was Reddaway v. Banham, in 1896, Appeal Cases, p. 199. Will your Lordship look at the passage in Lord Herschell's Judgment on p. 208? " It must be taken if the findings of the Jury are to stand on which I shall have a word or two to say presently that the description by the Defendants of their belting as 'camel hair belting' would deceive purchasers into the belief that they were getting something which they were not getting, namely, belting made by Reddaway. If they would be thus deceived by the Defendants' statement, there must surely be some fallacy in saying that they had told the simple truth. I will state presently where I think the fallacy lurks. Before I do so, however, it is right that I should say that there appears to me abundant evidence to support the findings of the jury. For many years belting made of camel hair yarn had been known in the markets of the world. It had been sold under a variety of names. But there was ample evidence to justify the finding that amongst those who were the purchasers of such goods the words 'camel hair' were not applied to belting made of that material in general ; that, in short, it did not mean in the market belting made of a particular material, but belting made by a particular manufacturer. It is impossible, I think, to read the correspondence which passed between the Defendants and those who were ordering goods of, or procuring orders for them, without seeing that this was the case." Camel hair belting meant nothing in the market

other than belting made by Reddaway. That was the whole basis. Of course, the strongest evidence there was a letter written by Banham's agents (I do not know whether your Lordship remembers there was that letter written), "If you mark the belting 'camel hair belting' I shall be able to take the orders from Reddaways."

Mr. Justice BYRNE: There is a passage at 210, if you have gone past it, which seems not quite useless: "The name of a person"—that paragraph.

Mr. WALTER: Yes, my Lord. "The name of a person, or words forming part of the common stock of language, may become so far associated with the goods of a particular maker that it is capable of proof that the use of them by themselves without explanation or qualification by another manufacturer would deceive a purchaser into the belief that he was getting the goods of A when he was really getting the goods of B. In a case of this description the mere proof by the Plaintiff that the Defendant was using a name, word, or device which he had adopted to distinguish his goods would not entitle him to any relief. He could only obtain it by proving further that the Defendant was using it under such circumstances or in such manner as to put off his goods as the goods of the Plaintiff. If he could succeed in proving this I think he would, on well-established principles, be entitled to an injunction." Then there are some further passages I desire to call your Lordship's attention to. Your Lordship will see further in this case on page 215, at the end of the Judgment of Lord Herschell, they never stopped the use of "Camel hair," and the moment the Judgment was given Banham commenced to sell "Banham's Camel Hair Belting," and he has done so to this very day. All he did was to sell at as "Banham's"; the next day he started using "Banham's Camel Hair Belting." Then there is Lord Macnaghten's Judgment. This is useful also as showing the principle of the cases: "My Lords, in this case your Lordships are not asked, at least by the Appellants, to lay down any new law. The Appellants are content to rely upon the old and familiar doctrines of the Court which have been repeated over and over again. 'I have often endeavoured,' said Lord Justice James, in a well-known trade mark case (Singer Manufacturing Company v. Loog) in which there was no claim to a registered mark, 'I have often endeavoured to express what I am going to express now (and probably I have said it in the same words, because it is very difficult to find other words in which to express it) that is, that no man is entitled to represent his goods as being the goods of another man; and no man is permitted to use any mark, sign, or symbol, device or other means whereby, without making a direct false representation himself to a purchaser who purchases from him, he enables such purchaser to tell a lie, or to make a false representation to somebody else who is the ultimate customer.'" That was on another point. In all these cases there was considered the question of the ultimate purchaser. Now to see the ground on which this decision was given at page 217, the first paragraph: "It seems to have been the fashion for manufacturers of hair belting to distinguish their goods by the name of some chosen

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animal, hairy or hairless. There was, for example, buffalo belting, there was yak belting, and crocodile belting. Reddaway, unfortunately for him, as it has turned out selected the camel as his emblem. He called his belting camel hair belting. Owing to the excellence of his manufacture his belting became widely known all over the world. It was advertised as camel hair belting. It was ordered, sold and invoiced as such; and so camel hair belting came to mean Reddaway's belting, and nothing else. It was admitted at the trial that for about 14 years no belting had been made or sold under the description of camel hair or camel hair belting except by Reddaway and certain persons whom he had promptly challenged and stopped. Indeed, so long as the expression 'camel hair belting' was taken to be a fanciful designation, Reddaway had no difficulty in holding the field against any interloper." Then he goes on to say how Banham found out that it was true that camel hair belting was really camel hair belting, and so on. That is the next of the cases I put. Therefore in both those cases the finding of the Court was the words had ceased to have any meaning except as meaning the goods of the particular persons.

Now the next case is the Cellular Clothing case, in which evidence was given to the same effect, and in which evidence, on the other hand, was given that "Cellular" was in use, and the decision was the other way. The Cellular Clothing case is in 1899 Appeal Cases, page 326. The Lord Chancellor in that case says: "My Lords, in this case it appears to me that the initial proposition which has been put forward by the learned Counsel is perfectly accurate, namely, that this is a question of fact, and if it is a question of fact it is, to my mind at all events, one that admits of a very easy solution. I agree with almost every word of the Judgment of the Lord Ordinary, and with the exception of the initial proposition, I agree with almost every word in the Judgment of the Inner House. I confess I am a little puzzled to know how the initial proposition of the Inner House is reconcilable with what follows. The learned Judges there say they felt a difficulty, and I think they are quite right in saying so, as to 'the possible subsistence in trade use of the primary meaning of the word "cellular" as denoting a particular class of goods, alongside of the secondary meaning which the pursuers seek to affix to it as denoting goods manufactured or sold by themselves.' Then the learned Judges go on with great accuracy, I think, to say: 'An invented name has either no meaning at all, or no meaning in relation to the goods which it denotes, and it has been held that a trader who selects such a name for the purpose of distinguishing his goods from those of other traders is entitled to be protected in the use of the sign which he has chosen. In such a case the mere fact of the use of the arbitrary sign by a rival trader raises a presumption of a design to pass off his goods under false colours, which it is not easy to displaces.' Every word of that I concur with. Then the learned Judge goes on to say, speaking of the evidence 'I think it must be admitted that the word 'cellular' has not lost its descriptive signification, according to the use of the cloth trade.

In other words, that the primary meaning has not been displaced by the secondary meaning, which the pursuers allege, and have in part proved.' Further on he says : ' In the balanced state of the evidence as to secondary meaning I think it may be affirmed that there is no presumption against the defenders from the mere use of the adjective " cellular " as a term descriptive of goods which they offer for sale. That being so, we are referred back to the principle on which this innominate right depends, which is, that a trader is not entitled to represent that the goods which he sells are the goods of a different trader to his injury.' " Then he goes on : " I must say for myself I concur in every word of those passages which I have referred to in the Judgment of the Inner House, and the only thing that, as I have said, puzzles me is how, on that reasoning and under those circumstances, the Inner House can have pledged itself to the proposition that, but for certain circumstances not very clearly defined, they would have been in favour of the pursuers on the initial question. That is the whole question, the proposition being, as is rightly pointed out, that no man has a right to sell his goods as though they were the goods of another man. That is the proposition, and the passages I have read seem to me very clearly to dispose of the proposition that in the particular case here dealt with one man is selling his goods as the goods of another. But, on the other hand, it has been pointed out, with great force and precision, that all the circumstances proved are compatible with the view that the word has retained its natural and proper signification."

Now, my Lord, there was a case where, if your Lordship turns to the evidence, there was evidence led, and a lot of people called to say that " Cellular Clothing " meant to them goods of the Appellants, and nothing else. On the other hand, there was evidence given that the word " Cellular " was used in the trade to describe goods not the goods of the Appellant, and that, therefore, the word could not be said to have wholly lost its signification in its ordinary meaning, and come to have only the secondary meaning.

Mr. Justice BYRNE : If you establish your first proposition that this is descriptive of the article, then what is said in this Judgment has a great deal of bearing, page 336 : " Where you are dealing with a name that is properly descriptive of the article, the burden is very great to show that by reason of your using that name descriptive of the article you are selling, you are affecting to sell the goods of somebody else."

Mr. WALTER : Yes, my Lord, that was the very passage I was coming to next. Then your Lordship sees I have marked a passage here which has a direct bearing on why I read the passage in their own advertisements.

Mr. Justice BYRNE : " That it was for the Appellants to establish that an ordinary word in the English language properly applicable to the subject matter of the sale was one which had so acquired a secondary and technical meaning differing from its natural meaning that it could be excluded from the use of everyone else."

Mr. WALTER : Yes, my Lord. May I read the passage a little bit before : " In this particular case what strikes me is this, as the Inner

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House have distinctly and correctly pointed out in the passages from their Judgment that have been read, where you are dealing with a name that is properly descriptive of the article, the burden is very great to show that by reason of your using that name descriptive of the article you are selling you are affecting to sell the goods of somebody else. Certainly the Camel Hair Belting case may be an example of what under ordinary circumstances it would be very difficult to establish ; but it was established there. But here the word 'cellular,' as a description, is applicable, some of the documents and all the advertisements point out how appropriate and accurate that mode of description is to the article sold." Those were the Appellants' descriptions, and that was the reason I called your Lordship's attention to the advertisements of Messrs. Burroughs, Wellcome & Co. Their own very advertisements when they introduce this word to the public point out exactly what it means, that it is descriptive, and they give you drawings of what they mean, and introduce the word in that way. Therefore I say the House of Lords drew particular attention to those very features in the advertisements of the applicant. Now, my Lord, I go to the Judgment of Lord Shand.

Mr. Justice BYRNE : There is a short passage in Lord Davey's Judgment.

Mr. WALTER : Yes, my Lord. I have got some of Lord Davey's too. This is at the bottom of page 339. "A totally different principle must apply in the case of goods which are sold under a merely descriptive name. If a person applying a word or term of well known signification and in ordinary use, though he is not able to obtain a patent for his manufacture, and although he has not got the protection of a registered trade mark for the goods he is proposing to sell, is yet able to acquire the right to appropriate a word or term in ordinary use in the English language to describe his goods, and to shut out others from the use of this descriptive term, he would really acquire a right much more valuable than either a patent or a trade mark ; for he and his successors in business would gain the exclusive right, not for a limited time as in the case of a patent, but for all time coming, to use the word as applicable to goods which others may be desirous of manufacturing and are entitled to manufacture and sell as much as he is. That being so, it appears to me that the utmost difficulty should be put in the way of any one who seeks to adopt and use exclusively as his own a merely descriptive term. The case on which the Appellants have chiefly relied is that of the camel hair belting, the case of Reddaway. Of that case, I shall only say that it no doubt shows it is possible where a descriptive name has been used to prove that so general, I should rather say so universal, has been the use of it as to give it a secondary meaning, and so as to confer on the person who has so used it a right to its exclusive use, or, at all events, to such a use that others employing it must qualify their use by some distinguishing characteristic. But I confess I have always thought, and I still think, that it should be made almost impossible for anyone to obtain the exclusive right to the use of a word or term which is in ordinary use in our language, and which is descriptive only ; and, indeed, were it not for the decision in

Reddaway's case I should say this should be made altogether impossible. It is true the question in issue in cases of this class may generally be broadly stated as: Did the Defendants by their representations seek to induce purchasers to acquire their goods under the false belief that these goods were of the Plaintiffs' manufacture? If it can be shown that representations to the effect that the goods were manufactured by the Plaintiffs be made directly or by implication, by the language used, the Plaintiffs would, of course, be entitled to a remedy. But where the Plaintiffs' proof shows that the only representation by the Defendants consists in the use of a term or terms which apply, and correctly describe the goods offered for sale, as in the present case, it must be a condition of the Plaintiffs' success that they should prove that these terms no longer mean what they say—or no longer mean only what they say—but have acquired the secondary and further meaning that the particular goods are goods made by the Plaintiffs, and, as I have already indicated, it is in my view difficult to conceive cases in which the facts will come up to this." Then, my Lord, I go to Lord Davey's Judgment: "But there are two observations which must be made—one is that a man who takes upon himself to prove that words, which are merely descriptive or expressive of the quality of the goods, have acquired the secondary sense to which I have referred, assumes a much greater burden—and, indeed, a burden which it is not impossible, but at the same time extremely difficult to discharge—a much greater burden than that of a man who undertakes to prove the same thing of a word not significant and not descriptive, but what has been compendiously called a 'fancy' word. The other observation which occurs to me is this: that where a man produces or invents, if you please, a new article and attaches a descriptive name to it—a name which, as the article has not been produced before, has, of course, not been used in connection with the article—and secures for himself either the legal monopoly or a monopoly in fact of the sale of that article for a certain time, the evidence of persons who come forward and say that the name in question suggests to their minds and is associated by them with the Plaintiffs' goods alone is of a very slender character"—now, my Lord, that is the evidence that your Lordship has been treated to in this case—"for the simple reason that the Plaintiff was the only maker of the goods during the time that his monopoly lasted, and therefore there was nothing to compare with it, and anybody who wanted the goods had no shop to go to, or no merchant or manufacturer to resort to except the Plaintiff." Then he adopts, what was said in Siegert v. Findlater, "That is, my Lords, a matter of express decision in the case of a patent. If a man invents a new article and protects it by a patent, then during the time of the patent he has, of course, a legal monopoly; but when the patent expires all the world may make the article, and for that purpose use the name which the patentee has attached to it during the time when he had the legal monopoly of the manufacture. But the same thing in principle must apply where a man has not taken out a patent, as in the present case, but has a virtual monopoly because other manufacturers, although they are entitled to do so, have not, in fact, commenced to make the article."

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My Lord, their whole monopoly is based on a trade mark. They have had a monopoly which I say they were not entitled to. Their whole monopoly here is based on a trade mark, with information as to which they delude the world and frighten the trade into acquiescing in their rights. I say their trade mark absolutely ought never to have been registered. That is the other point I shall call attention to. The Judgment goes on : " He brings the article before the world, he gives it a name descriptive of the article : All the world may make the article, and all the world may tell the public what article it is they make and for that purpose they may *prima facie* use the name by which the article is known in the market." Then his Lordship deals with the case before him as showing the user of it. At the top of the next page he says : " I will assume for the purpose of this case that the pursuers, as Mr. Haslum says in his evidence, first introduced the article, the cloth which is manufactured in this particular cellular mode (I am obliged to use the word 'cellular' because I know of no other word to express it) ; and they first attached the name 'cellular' to the cloth manufactured in that particular mode—whether it is so is not quite clear from the evidence, but I assume that Mr. Haslum's statement in that respect is correct. I think it is established by the evidence that the word 'cellular' is beyond all question of a descriptive character. I need only refer to the advertisements issued by the pursuers themselves for that purpose." So I here ask your Lordship to refer to all their early advertisements when they brought this thing before the public ; they are descriptive, every one of them, and tell you exactly what " tabloid " is. " Then, that being so, what is the evidence upon which the pursuers rely for the purpose of showing that the word has acquired a secondary meaning, so that the mere simple use of the word is alone evidence of a misrepresentation by the defenders ? First, we have the advertisements. Now, my Lords, I am not going to delay you by reading the advertisements, they have been referred to, and so on. Then on page 346 : " My Lords, the second class of proof is that of witnesses who say in effect this, I will take one of the best, and I think one of the earliest witnesses—(Mr. Henley). 'If I heard anybody in the trade speak of cellular goods, I would understand that he meant the product of the Cellular Clothing Company." If I heard anybody speak of " tabloid " I knew it referred to the goods of Burroughs, Wellcome & Co.

Mr. Justice BYRNE : Stopping there for a moment, if you are right and this word " tabloid " is clearly descriptive, Messrs. Burroughs, Wellcome & Co. were not the only persons making this class of goods.

Mr. WALTER : That is perfectly true, and this case would never have come before the Courts but for the fact that Burroughs, Wellcome & Co. have registered the trade mark. People do not like infringing a trade mark. They do not care about fighting the rights of a person who sets up trade marks. That is dealt with later on, as your Lordship sees.

Mr. Justice BYRNE : Yes.

Mr. WALTER : One always hears the same type of evidence brought forward. Here comes the next batch of evidence your Lordship has been treated to. " The third class of evidence consists of cases in which the

pursuers have induced certain persons to submit to injunctions and pay costs."

Mr. Justice BYRNE: The only effect of that is to show they have been diligent.

A Mr. WALTER: He says: "That does not appear to me to be very strong evidence in favour of the pursuers. Of course, a shopkeeper or a person in that position would hesitate a long time before he incurred the expense, which, in the case of a trade mark or in a patent case, is not slight, of defending an action of this character. Probably the value to
B him of the trade he would lose would not in any way compensate for the risk he would incur. Therefore, as evidence of the fact, I do not attach much importance to those cases." I think that those cases justify the position which I put before your Lordship, that if the word is a descriptive word they must say that it has
C ceased to be descriptive, and that it applies to their goods only, and that you cannot have a current user of the word in its descriptive sense alongside of a monopoly claimed that the word has acquired a secondary signification, and means the goods only of the Plaintiffs. They are absolutely inconsistent. If the word as upon their own evidence,
D their own advertisements, is shown to be a descriptive word by the fact that persons, dictionary, authors and others have used it as clearly showing what it meant and have given its derivation, and if doctors have asked for goods in tabloid form and various other things of that kind—all showing that the thing was—then
E when I show, as I shall prove to your Lordship, the general use of it by the public is as meaning not the goods of Burroughs, Wellcome & Co., but as meaning the goods of a particular description, a particular size, a convenient form, used generally in the sense of tablet, I say they have failed absolutely to bring this out of the authority of decided cases on the
F subject of passing off.

Mr. Justice BYRNE: "Tabloid" signifies what do you say?

Mr. WALTER: A kind of tablet—a kind of medical tablet—a compressed tablet. I prefer their own definition.

Mr. Justice BYRNE: But, wait. What do you say the word
G signifies, independently of what it has been used for?

Mr. WALTER: "Of the form of a tablet"—that is as they define it themselves.

Mr. Justice BYRNE: That would include any shape almost that signifies a kind of tablet or form of a tablet.

H Mr. WALTER: A medical tablet. It was registered for use and has never been used except in respect of that.

Mr. Justice BYRNE: But they were originally square or nearly square tablets.

Mr. WALTER: According to their case it would be, and they claim
I it would apply equally to it if it was square; but it is a kind of tablet—a kind of medical tablet.

I am afraid, my Lord, I have been rather long, but now there are only one or two points I have to deal with. Let me deal for a few moments with the detail of the case as made out by them on the point of passing

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off. No claim, as your Lordship sees, has ever been made in this case for use of the word "tabloid" in connection with the letters "B. & W." or "B. W. & Co.," or "Burroughs, Wellcome & Co." What are the facts with regard to that? Your Lordship sees in paragraph 7 of the Defence a perfectly definite admission, and this case has never been fought on this point at all, and no evidence need have been given on it at all. "They admit that the word 'tabloid,' coupled with the letters B. W. & Co. or the name Burroughs, Wellcome & Co. means goods of the Plaintiff and no others. They have not supplied, and are not in the habit of supplying any goods other than the goods of the Plaintiff under orders in which the word 'tabloid' is coupled with such letters or name. And they are and always have been ready to give any undertaking not to sell under orders so given any goods other than those of the Plaintiff. No notice of any such claim or any notice at all was given to the Defendants prior to the issue of the Writ in this Action."

Now, my Lord, what are the cases. The first case they allege (which is a verbal order) is the 13th August, 1902. They allege that they verbally ordered Burroughs, Wellcome & Co.'s "cascara segrada tabloids." They admit that they were told that the goods were in our bottle. It is so long ago that we are unable to give your Lordship any information; nobody remembers; there was no notice given us at the time. We can do nothing except this: We had previously, and were then selling goods of Burroughs, Wellcome & Co., and amongst them cascara segrada. We were then, as we always have been, in the habit of putting up cascara segrada goods in our own bottles (which is the usual practice with chemists) which were labelled "tablets" and "tabloids." We had about that time also purchased "cascara segrada" from Allen & Hanbury, which we put up in bottles labelled "tablets." We have endeavoured to find out about it, and you will have the manager here. The assistant, knowing that Burroughs, Wellcome & Co.'s goods had always been sold in this box labelled "cascara segrada," believed he had a bottle of these very things (which we had in the shop at the time) bearing our own name "Thompson & Capper," and labelled "tablets." We bought them in bulk in large bottles containing 500, and we put them up in convenient sizes for the public to buy and at convenient prices and labelled them as our goods. Nobody remembered anything about it, because there was nothing to call attention to it. The purchaser was told (which was the fact) that the goods were put up in our own bottle. We cannot find out anybody who has any recollection of the particular matter on the 13th August, 1902. We admit at once if they were supplied they must have been supplied in the mistaken belief, by our witness, that it was so. The other "B. & W." is by Miss Davies, and it is "B. W. & Co." That was the case where there was a prescription. I shall produce to your Lordship the actual Prescription Book of which that is a copy, and I have got the gentleman here who copied it. That appears in the Prescription Book from which the prescription was made up: "Captn. James R. Pot. chlor. tab."

Mr. Justice BYRNE: You are putting it rather in the wrong way. The entry in the book was made from the prescription.

Mr. WALTER : That is so, my Lord ; but, of course, the actual article was made up by whoever made up the medicine from the book, and it is entered here as " R. pot. chlor. tab. 40. When throat symptoms are threatened suck one of these." The gentleman who made that entry says he cannot understand why if " B. W. & Co. " was there it was not copied.

Mr. Justice BYRNE : Let me look at it.

Mr. WALTER : It is the bottom entry on page 296 of that book, my Lord. (Prescription book handed to his Lordship.) Now they are, as Mr. Burroughs admitted, very large customers of his ; they are chemists in a very large way of business, carrying on their business in very large towns, and they have been scrupulous with regard to preserving the rights of Messrs. Burroughs, Wellcome & Co. No notice of any kind is given of this.

There is one other point I should deal with ; that is, the case of the cascara sagrada tabloids, " B. & W.," about which T. Smith gave evidence. That is described as a written order. That is the gentleman who, your Lordship remembers, stumbled over " sagrada " and got marvellously plain over " tabloid." He stumbled over " sagrada " in order to hand in a document on which " B. & W." was written, which he took away afterwards, and as to which there is not the slightest knowledge whether anybody saw it or not, and whether the " B. & W." was seen or not. That happened on the 12th September, 1902, and there again no intimation of any kind was given to us until the 17th of January, the date of the Writ—not the slightest intimation. I will call your Lordship's attention to the cases in which your Lordship and other Judges have commented in no measured terms on the manner of obtaining evidence of this kind when giving no warning of any kind or description to the Defendants until long after the time when the thing has passed away from the memory of the people who had to deal with it, and when there are no means of checking it at all. All I can say, my Lord, with regard to the other instance, is that you shall have the evidence of the gentleman who made that entry. It is an entry, he says, on which there is nothing to recall it to his attention, and all he can say is that he cannot understand why, if " B. & W." was there, he did not enter those letters as in the ordinary way ; he remember absolutely nothing about it, except that the entry was made.

The cases to which I was proposing to call your Lordship's attention on that point are cases before your Lordship, before Mr. Justice Farwell and before Mr. Justice Buckley. The first case is the case of Carr & Sons v. Crisp & Co., Limited. (XIX. Reports of Patent Cases.)

At page 502 your Lordship says : " Then I want to say one more thing with regard to a case of this class, and that is that I think it is only fair that if it is intended to take proceedings those proceedings should be taken as quickly as possible, so that warning may be given to the Defendants that certain transactions are going to be called in question before the memory grows dull with reference to such transactions. In this case there was a lapse of three weeks, and the first intimation that Defendants

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got that proceedings were going to be taken was the Writ together with 13 Affidavits. I do not think it is a sufficient answer to say that if you gave warning there might be something done by the Defendants. I do not know what the suggestion was exactly, but that the evidence might be destroyed or kept out of the way. Whatever it was I do not think that is a sufficient excuse. I think that the proceedings should be taken at the earliest possible moment. That, however, does not affect the right of the Plaintiffs, on making out their case to an injunction, but in this case I think they have failed to make out their case, and therefore the action must be dismissed with costs."

This action has not been fought or attempted to be fought on the basis of any claim on the part of the Defendants to any right to use "tabloid" in connection with the letters "B.W." or "B.W. & Co." That, as your Lordship sees from the Pleadings, has been admitted at once, and no suggestion has been made that we had any right or tittle of right to goods under "B. & W."

As your Lordship sees, they went again in September and October and again in January.

We have gentlemen here who have supplied other orders, and the fact is that we have got several orders for "B. & W." which are given in our books about those dates. Probably they tried to get us on "B. & W." again. We find prescriptions, indeed, with "B. & W." upon them.

The other case to which I will refer is in the same volume, and it is the case of Ripley v. Griffiths, which was tried before Mr. Justice Farwell.

At page 597 he says: "Of course one looks with a certain amount of suspicion always on a trap set, because it is quite obvious that people go there with the intention of successfully trapping, and they are apt—possibly unconsciously, but at any rate they are apt—to set their trap in the way that traps are usually set, so that it will not be seen. I think, when people intend to rely upon evidence of this sort, the least they can do is, when they have got their evidence complete, to call the attention of the people they have convicted to the fact, in order that he or she may have a recollection of the circumstances, and may be able to recall them when appearing in the witness box. To say that anybody can possibly recollect the sale of one halfpenny cake of blue weeks after, or even days after, seems to me to be almost preposterous, and, in fact, so much so that I had a long cross-examination yesterday directed to the point that inasmuch as there was nothing to call to the recollection of the Defendant the particular case of the document, she could not contradict the witnesses on the other side—I can only say that, to my mind, that is not a fair way of getting up a case, by setting traps. If you want the Court to rely upon the testimony of persons trapping, when they have completed their trap, and have got the victim in it, the least they can do is to tell him that that is the occasion that they are going to give evidence about in Court, so that, then and there, he may be able to recall and recover his recollection of the

circumstances and be ready to give his account in Court, so that the Court should not be asked to rely upon the testimony of witnesses for the Plaintiffs on the ground that the Defendant cannot possibly remember what took place. Further the document relied upon was written out and read out by the persons setting the trap in the shop to the young woman. The ordinary course would be to ask her to make out a bill. If you had got the bill made out in the Defendant's handwriting, or in her assistant's handwriting, there would be a very different state of circumstances." He goes on to say he has to do the best he can and he dismisses the action.

As regards "tabloids," as a matter of fact we have known, as every other chemist knows, of the monopoly claim set up by Messrs. Burroughs & Wellcome. We could not possibly be ignorant of it. They have deluged us, as well as everybody else, with their literature. Like all other people we do not desire law suits. Unfortunately—whether as the result of the action or not—my client succumbed shortly before the action came on for trial, and therefore he is unable to give your Lordship any evidence with regard to this. But when we were trapped—I say it deliberately, trapped—and not warned in any way, we determined to test this question. I could give your Lordship evidence that the public, when asked whether they mean "Burroughs & Wellcome," get angry and point to things which are labelled "tablets" and say: "That is what I want," and they call them "tabloids." They send written orders for "tabloids" which are on their own bottles "tablets." They do that with regard to hundreds of things. Nearly all the homœopathic prescriptions which are put up in compressed drugs are put up in that way. I am going to call doctors before your Lordship who keep what they call "tabloids" themselves—vehicles for saturating with homœopathic drugs, and send them out and label them "tabloids"—which were never made or conceived of by Burroughs & Wellcome. All this is going on. There is a large amount of user of "tabloid" in a sense purely descriptive, having nothing on earth to do with Burroughs & Wellcome. I shall produce any number of prescriptions received from doctors by chemists for proprietary articles, putting "tabloids" for goods which have nothing to do with Burroughs & Wellcome. One manufacturing chemist will produce over 400 just culled within the last year or two, all of them advertised as tablets, and labelled "tablets," and yet they are everywhere ordered as "tabloids." With that state of things going on, I ask your Lordship to say, first of all, that they have not made out a case except by the evidence of persons whom they have threatened right and left, and who naturally, as I say, as we have, have not cared to face the expense and annoyance of a law suit against a wealthy firm of the character of Messrs. Burroughs & Welcome. I ask your Lordships to say that the Plaintiffs have entirely failed to make out their case, and I ask your Lordship to make an Order striking out their trade marks.

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Mr. CHARLES KIRBY BRANSBY, affirmed.

Examined by Mr. WALTER.

3626. I think you are the manager of the Defendants' shop and warehouse at 51, Piccadilly, Manchester ?—I am.

3627. The Defendants are manufacturing as well as retail chemists ? —Manufacturing chemists as well as retail.

3628. They have businesses—where ?—Manchester, Liverpool, Huddersfield, Sheffield, Southport, and Birkenhead.

3629. At a considerable number of places ?—Yes, a considerable number of places.

3630. I believe you yourself are a duly qualified chemist and druggist ?—That is so.

3631. You have had 23 years' experience, all of them in the employ of Messrs. Thompson & Capper ?—I have been with Messrs. Thompson & Capper all that time.

3632. When you first went there 23 years ago, were the Defendants in the habit of making and selling drugs in tablet form ?—Yes.

3633. And, I believe, there are a very large number of articles that are made by the firm which are their proprietary articles ?—A great number.

3634. First of all, have you looked out some of the written orders from customers for goods ordered under the description of " tabloids "?—Yes, I have.

3635. Do you produce their written orders received by you with respect to the goods ? Are all those orders for tabloids ?—These orders are all for tabloids as far as I know. Most of them received at Piccadilly come under my special notice.

3636. Are any of these goods the goods of Messrs. Burroughs & Wellcome ?—I do not think so.

Mr. Justice BYRNE : How many are there ?

Mr. WALTER : I do not know quite how many there are.

The WITNESS : 80 to 100.

3637. Mr. WALTER : I think they appear from the dates. Those are all within the last year or two, I think ?—Yes, that is so.

Mr. WALTER : As to some of these, they are numbered. They bear a number, do they not, my Lord ?

Mr. Justice BYRNE : The first one is " L.B. 179."

3638. Mr. WALTER : They may not all be numbered—some of them are. Some of those are from doctors, are not they ?—Yes, many of them.

Mr. Justice BYRNE : There are three small bundles. How do you want these marked ?

Mr. WALTER : I think they had better be all tied together and marked.

Mr. Justice BYRNE : " C.K.B. 1 "?

Mr. WALTER : Yes.

Mr. Justice BYRNE : You had better let Mr. Neville see them.

(Same handed to Mr. Neville.)

3639. Mr. WALTER : What document have you there ? Is that a copy of the list ?—Yes, that is all.

A Mr. NEVILLE : I was going to put on the back of these, my Lord, a consecutive number, so that we may know how many consecutive bundles there are in the big bundle.

Mr. WALTER : Then we had better call them A, B, C and D—C.K.B. 1a, b, c and d, if you like.

B Mr. NEVILLE : There are four of them, my Lord, A, B, C and D.

(Bundles of document put in and marked C.K.B. 1a, C.K.B. 1b, C.K.B. 1c, C.K.B. 1d.)

3640. Mr. WALTER : Has your firm been in the habit of purchasing goods from Messrs. Burroughs & Wellcome ?—Yes.

C 3641. Have you a list of the goods so purchased by you ?—I have not a list in my pocket. I know pretty well a great many of them we do purchase from them.

3642. May I take it there are a large number of drugs which you purchase from them ?—A very great many.

D 3643. Amongst the drugs that you have purchased was cascara ?—Yes.

3644. Chlorate of potash ?—Yes.

3645. And a large number of other goods ?—That is so.

3646. In what quantities were those usually purchased by you from E Messrs. Burroughs & Wellcome ?—In bottles containing 500 tablets. We might have a number of those bottles at one time, so that we might have 1,000 or 2,000 in bottles of 500.

3647. Messrs. Burroughs & Wellcome put them up in 500 bottles ?—That is so.

F 3648. You might buy one, or four, or five 500's at a time ?—Certainly.

3649. How did you retail those goods for sale ?—In small bottles of 25 and 50 and so on for convenience, with our label on them "compressed tablets " of so and so and our name.

G 3650. Did you also retail some of Messrs. Burroughs & Wellcome's goods in the small original parcels as sold by them ?—Yes, quite a number of them.

3651. What has been the general bulk of your business dealings with Messrs. Burroughs & Wellcome ?—In what way do you mean ?

H 3652. The bulk—has it been considerable ?—Practically all the tablets we had were from Messrs. Burroughs & Wellcome.

3653. Do you remember whether about the months of August and September, 1902, you had in stock any of Messrs. Burroughs & Wellcome's goods ?—Yes, a large quantity.

I 3654. Had you in stock cascara ?—Yes.

3655. Tabloids of potassium chlorate ?—Yes.

3656. And a large number of other goods ?—That is so.

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3657. Had you also at that time also purchased from Messrs. Allen & Hanbury any goods ?—Yes, we had some of their goods in as well.

3658. How were those goods put up for sale ?—In small bottles containing similar numbers to those I have just described.

3659. Were there any different labels put on those to the labels which you put on the goods of Messrs. Burroughs & Wellcome ?—No, just the same.

3660. Is that the sort of label that you used. (Handed) ?—Yes, that was one of our labels.

(Exhibit put in and marked C.K.B. 2.)

3661. Except when retailing the goods of Messrs. Burroughs & Wellcome in their original parcels, have you ever placed upon any goods in your shop the word "tabloid" ?—Never at all.

3662. In the use of the word "tabloid" upon those goods was the original label of Messrs. Burroughs & Wellcome used—when retailed as such ?—That is so.

3663. I take it that you have received frequently from Messrs. Burroughs & Wellcome notification of the rights they claimed ?—Yes.

3664. Did you know that they had registered the word "tabloid" as their trade mark ?—I knew they claimed it as their trade mark.

3665. Further, did your principals know of that too ?- Oh, most certainly.

3666. Do you yourself see the public—the customers in the shop ?—Yes, almost everyone who comes in.

3667. There are several assistants in your shop, I suppose ?—Yes.

3668. You know the list in the Statement of Claim ?—Yes, I have seen that.

3669. Have you any knowledge yourself of any of these matters ?—No, not the slightest.

3670. No recollection of them ?—No recollection whatever.

3671. Have you endeavoured to ascertain whether any of the assistants have any recollection ?—I have asked all the assistants in our place if they knew anything of them, and they did not.

3672. Would you look at that book ? Is that the prescription book kept in the ordinary course of your business ? (Handed.)—This is the book in which we copy all prescriptions which come to us.

3673. What is the number of the right-hand page ?—296.

3674. Looking at page 296, at the bottom right-hand corner, do you see an entry there ?—Yes.

3675. In whose handwriting is that ?—My own writing.

3676. What does that state : "Capt. James. R. Pot. clor. tab.," and the number 40. "When throat symptoms are threatened suck one of these." Then some initials which I did my best to copy, but they were very indistinct.

3677. Mr. Justice BYRNE: There is a reference to some other page, what would that be ?—That would be 314. On hearing that a prescription had been dispensed at our place, and that the letters "B. W. & Co." were in the original prescription, or were stated to be so,

we put a reference here and copied this in the book according to the rough copy we had sent to us so that on any future occasion we should be certain to send Burroughs, Wellcome & Co.'s goods.

3678. Mr. WALTER : Was that subsequent entry made after the commencement of this action ?—Oh, yes, certainly.

3679. The exhibits in this case were inspected when the motion for the injunction originally was made, and was a communication made to you by your solicitors as to the contents of the prescription which was exhibited ?—Yes, that is so.

3680. Have you made an entry of what was alleged to be the correct prescription ?—Yes.

3681. And referred to that in the subsequent prescription in your book ?—Yes, in the original entry we referred to it.

3682. Mr. Justice BYRNE : What date is this ?—The date of the reference is 3rd February.

3683. Mr. WALTER : Can you tell me by whose instructions that entry was made ?—By Mr. Thompson's.

3684. Your principal, who is now dead ?—That is so.

3685. Mr. Justice BYRNE : The third day of the second month ? —Yes.

Mr. WALTER : Unfortunately I cannot call Mr. Thompson. Upon having his attention called to the prescription when it was seen on the exhibit, he gave instructions to this gentleman, and said you must put a note and correct the entry.

3686. Have you any recollection what was in the original prescription ?—I do not remember seeing it at all.

3687. You have no recollection of it at all beyond the fact that there is an entry there in your own handwriting. You have no recollection what was in it ?—I have no recollection of the occurrence whatever.

3688. Beyond the fact that your entry there does not contain "B. & W.," and that a document which has been proved has "B. and W.," you have no recollection at all of what appears in your own handwriting on that page ?—Not the slightest recollection.

3689. Is it your practice, if initials of firms are put, to copy them ?—Invariably to do so—it is my invariable custom.

3690. But you cannot recall to your mind at all any fact in connection with it ?—No, I know nothing about it all except this entry in the book, which I recognise as my own.

3691. Is that entry dated ?—It is dated on the 9th, or it might be the 10th.

Mr. Justice BYRNE : Of August ?

Mr. WALTER : No, September, my Lord. That is the date when the order was given—10th September, 1902.

(Adjourned for a short time.)

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3692. Mr. WALTER : Now, Mr. Bransby, the prescriptions are entered in your prescription book, and are there, of course, for reference in case a repeat order should be given ?—Yes.

3693. I understand the subsequent entry you made was on the instructions given by Mr. Thompson, your principal, after his solicitors had seen the prescription exhibited to the affidavit ?—Yes, just a rough pencil copy of it.

Mr. WALTER : As a matter of fact, it was shown me a month ago, my Lord. It was sent down to the London solicitors, and they inspected the document, and it was exhibited.

3694. Mr. Justice BYRNE : This was copied by you ?—Yes.

3695. Mr. WALTER : On the instructions of Mr. Thompson ?—On the instructions of Mr. Thompson.

3696. In addition to the actual bundles of orders that you have received which have been put in, do you from time to time receive prescriptions from doctors ?—Yes.

3697. What happens with original prescriptions ? Are they kept by you or are they returned ?—No, they belong to the patient.

3698. They belong to the patient and are returned?—And are returned to them.

3699. Do you produce copies of prescriptions which have from time to time come in ?—Yes.

3700. Are these copies of some of the prescriptions that you have received ? (Document handed to the Witness.)—Yes, these are copies of the prescriptions which we have received.

Mr. WALTER : They are from the prescription book, my Lord.

Mr. Justice BYRNE : You do not want the prescription book marked, do you ?

Mr. WALTER : No, my Lord.

3701. Are those for tabloids ?—These are for tabloids.

3702. Are those for the goods of Messrs. Burroughs, Wellcome & Co. ?—No, these are not Burroughs, Wellcome & Co.'s.

3703. Are those all for proprietary or other medicines sold by yourselves ?—They are all for special homœopathic preparations.

(Put in and marked C.K.B. 3.)

Mr. Justice BYRNE : 1900 seems to be the earliest on this.

The WITNESS : Yes, my Lord, the earliest I looked to

Mr. WALTER : The earliest he has looked to is 1900. We have not made a complete search of our books.

3704. Mr. Justice BYRNE : Burroughs, Wellcome & Co. have not made up any sulphur tabloids ?—Not of that number.

3705. 30 grains ?—No. "30" means a special designation that they are a special attenuation.

3706. And ~~Wyeth~~ No. 1 ?—No. 1 being a special attenuation.

3707. Mr. Justice BYRNE : "Tabloid sulpho one" ?—Yes, my Lord.

Mr. Justice BYRNE : Have you got a tabloid sulpho one ? Have you got the equivalent for what you supplied in answer to that ?

3708. Mr. WALTER : Are these preparations special preparations sold by you ?—Yes, preparations sold by us specially.

3709. Mr. Justice BYRNE : Have you got one of them ?—We have similar tablets. (Producing same.)

A Mr. Justice BYRNE : Yes, that is what I mean.

3710. Mr. WALTER : Is that a similar one ?—Yes.

Mr. Justice BYRNE : What is that ?

Mr. WALTER : Tablets, my Lord.

Mr. Justice BYRNE : But what of ?

B The WITNESS : Belladonna 1x.

3711. Mr. WALTER : What do they look like ?—They are flat tablets.

3712. And you can get some more, if necessary, so that my Lord can see them ?—Certainly ; they will be exactly the same shape as this.

C 3713. Mr. Justice BYRNE : The same as this ? You call these "tabloids" ? By no means.

Mr. Justice BYRNE : When they are ordered by the word "tabloids"——

Mr. WALTER : My Lord, that is our whole case. Everybody orders

D these things as "tabloids," but they are called "tablets."

3714. Mr. Justice BYRNE : Very well. What do you call these ? How do you describe their shape ?—Those are flat discs or flat tablets.

Mr. WALTER : There is one question I should have asked you as to that entry in the prescription book. Have you any recollection ?

E Mr. Justice BYRNE : Have you seen this, Mr. Neville ?

Mr. NEVILLE : No, my Lord.

Mr. Justice BYRNE : There does not happen to be the one mentioned here, but they are like this, I understand.

The WITNESS : Yes, my Lord.

F (Exhibit put in and marked C.K.B. 3.)

3715. Mr. WALTER : Have you any recollection at all whether that order in the prescription book that has been referred to, that came from Captain James, was executed from the prescription book, or from the original prescription ?—No, I really could not say.

G 3716. Mr. Justice BYRNE : Is it the usual course to make it up from the copy in the book, or from the original prescription ?—Generally the book is open on the desk, and it would very likely be made up from the book.

3717. Mr. WALTER : Is there any definite practice in regard to it ?

H —No, there is not ; it would depend upon circumstances.

3718. Mr. Justice BYRNE : Are those the prescriptions you have handed in ?—Those are copies of prescriptions.

3719. Those would be in your book ?—Yes, they are taken from this book.

I Mr. WALTER : They are merely copied from the prescription book.

Mr. NEVILLE : I should like to see the book.

3720. Mr. WALTER (to the Witness) : Do you know whether these things that have been copied are in that particular prescription book ?—Most of them are ; but we have another book here.

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3721. You have produced a number—70 or 80—written orders for goods under the name "tabloids." Can you tell my Lord how goods are verbally ordered over the counter—your special goods?—Frequently as "tabloids" or "tablets." The public do not seem to make any distinction between the two at all.

3722. As regards your experience in connection with the public, so far as you are able to judge, from the way in which the word is used to you, is there any distinction drawn between "tabloid" and "tablet"?—With a great majority of people no distinction whatever.

Cross-examined by Mr. NEVILLE.

3723. I do not see the distinction between these orders that you copied out and a multitude of other orders.

Mr. WALTER: Some are prescriptions and some are orders.

3724. Mr. NEVILLE: Some of these are copies of prescriptions and some are orders?—Some are prescriptions from medical men.

3725. Just look at that one and tell me what that is (indicating one of the copies)?—Shall I read it?

3726. No. What is it? You told us some of these were prescriptions you copied out, and others you put in as orders. What is that one? It is a prescription, is it not?—This is a prescription.

Mr. WALTER: There is one other question I ought to have put to this witness, if my friend will allow me.

3727. Are you in the habit of buying glass bottles for putting up your goods?—Yes, we put most of them in glass bottles—the tablets.

3728. Are Poths & Co. the manufacturers of those bottles?—Yes.

3729. Is this their catalogue? (Handed.)—Yes.

3730. Will you tell my Lord how the bottles are described in that catalogue?—One shape as "oval tabloid bottles," and again as "tabloid or cachou bottles."

3731. Those people are chemists' sundriesmen?—Yes.

Mr. Justice BYRNE: This seems to be an 1895 list.

(Catalogue put in and marked C.K.B. 4.)

3732. Mr. NEVILLE: Just to finish what you have been asked now and then I will go back to my former question. That firm still manufactures bottles for you?—Yes.

3733. They have done so continuously from 1895 onwards?—Yes.

3734. You get a price list every year, I suppose?—We get prices frequently—I do not know about every year.

3735. Why have you produced a price list of 1895?—The word "tabloid" is distinctly marked in the book as the description of a bottle for tabloids.

3736. Why have you produced the price list for 1895 instead of the price list in use?—I have not noticed any particular point in any other list.

3737. I do not quite follow what you mean. Have you searched in

that firm's price list to see if you could find the use of the word "tabloid"? —No, I have not.

3738. Then you really must give me a better explanation than this. It is not very usual to use a price list of 1895 when you have had a considerable number of price lists from the same firm since ?—I do not think I myself selected this price list at all.

3739. You did not select that price list yourself at all ?—No

3740. Do you have anything to do with the ordering of goods from this manufacturer ?—Yes, certainly.

3741. You send the orders ?—Yes.

3742. Therefore you are acquainted with the price lists ?—Yes.

3743. You are the man who would see them, and to whom they would come, and who would have to give attention to them ?—Yes.

3744. Is it not the fact that in the price lists which you have had in recent years there has been no use of the word "tabloid" at all ?—I have not the slightest idea.

3745. Do you swear that ?—I have not the slightest idea.

3746. Do you state that positively on your oath ?—Absolutely.

3747. Mr. Justice BYRNE : Or earlier ones ?—I could not state as to that.

Mr. NEVILLE : If in recent times Poths had been in the habit of using the word "tabloid" you must have known it and seen it ?—It is not necessary, I should have noticed it particularly.

3748. Do you think you would not have noticed it under the circumstances ?—I have not made any search at all in their list.

3749. Answer the question, please. Do you think you would not have noticed it under the circumstances ?—It is possible I might have done.

3750. Is it not perfectly certain that you would ?—No, I do not think it is.

3751. Is it not highly probable that you would ?—I do not think I have looked at the list—in fact, I have not—to find out if that was the case.

3752. I daresay you have not, but you do look through the lists which you receive from Poth & Company ?—Yes, to see the prices, and so on.

3753. And for some very considerable time you have known of this tabloid discussion ?—Yes, since the Writ was served.

3754. Do you think if Poths had been in the habit of using "tabloid" in recent years you would not have known it ?—I do not know. We should probably not have only one list in the place at Piccadilly for the current year.

3755. You might have had a hundred lists for all I care. You would have had Poth's list ?—We have Poth's list.

3756. And you would have ordered from Poth's list ?—Certainly.

3757. Now do you tell my Lord that you would not have known if Poth had used "tabloid" in recent years ?—I have not noticed that.

3758. Of course you must always use the last price list when you give your order ?—We use the latest price list where possible.

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3759. You could not have worked on an 1895 price list?—To order from that in the present year?

3760. Yes?—No, I should not think of doing so.

3761. Now look at that. (A price list handed to Witness.) It is not in the 1897 list, is it?—The word "tabloid"? A

3762. Yes?—No, it is not.

3763. Can you produce me any price list of Poth's later than 1895 which contains a reference to "tabloid"?—I could not say at all.

3764. You cannot, at all events?—No, I have not one myself.

3765. Do you know that Poth was stopped from using the word B "tabloid"?—No, I have no such information.

3766. Because it was an infringement of the trade mark?—No.

3767. You never heard that?—I never heard that at all.

3768. You never noticed that he, some years ago, ceased inserting "tabloid" in his price list, and has never done so since?—No. C

3769. Mr. Justice BYRNE: When did you give your last order for bottles from Poth—about?—Within the last month or two.

3770. Did you order them by the title in the current book, or how did you order them?—It was not ordered from the list at all—I ordered from the traveller. D

3771. Mr. NEVILLE: You consulted the list, I suppose, to see what the prices were?—I did not look at the list at all.

3772. You told us that you do look at the list?—Yes, I do sometimes, but I do not always order from the list. In fact, I order more frequently from the traveller. E

3773. You have ordered probably in the course of the last year from the list?—Yes, I think very likely.

3774. Then you must have noticed the name under which they listed their bottles?—No. I should not notice that probably.

3775. Do you mean to tell us that?—They have a little picture of a F bottle at the side of the page, and I should look at that and see the prices opposite to it; the point of the spelling of the word would not occur to me at all.

3776. Let us go back to our other point and see if we have got these documents right. *These* are copies from prescriptions?—Those you have. G

3777. All the prescriptions you get are copied in the prescription books?—Yes.

3778. *Those* you say are orders that you have received?—Yes, *these*.

3779. What I do not understand is that *that* appears to be not an order at all but a prescription?—That prescription seems to have got in H by accident.

3780. Very well, if you tell me that. But you do not keep prescriptions, do you? You send them back with the medicines?—The patient or messenger takes them back with the medicine, as a rule.

3781. Subject to that, you say as far you know these are orders and I not prescriptions?—Yes.

3782. And you put them in as orders, and that one you say is an accident, I understand. Are these copies extracted from the big volume that we have had here?—Yes.

3783. Then these pages refer to the pages in the book, do they ?—They refer to the pages in those books.

3784. "In those books," do you say, or in that particular book ?—There are two books. Some of those are in one of them, and one of them is in the other.

Mr. NEVILLE: Have we got the two ?

Mr. WALTER: Yes.

3785. Mr. NEVILLE: What periods do they cover ? Can you tell me without looking ?—Those prescriptions are since 1900.

3786. Those are the books, then, that cover the period from 1900 on ?—No, they cover before as well as since. Those papers you have in your hand are copied from those books from 1900 onwards. I have not gone back through the books to try and find more.

3787. Why not ?—I have not had very much time to do it for one thing. I could do it very easily.

3788. You have produced four from 1900 on; how far does 1900 take you back in these books——

Mr. LEVETT: *This* book goes back to May, 1894, and so, I am told, does the other.

3789. Mr. NEVILLE: Those two books are concurrent, are they ?—Yes.

3790. And they go back to 1894, but the books will show that for themselves, so I need not trouble about that. Are you the manager only of the particular shop in Piccadilly, Manchester, or are you the general manager of the business ?—I am manager of the Piccadilly shop and business.

3791. How many shops did you say Messrs. Thompson & Capper had altogether ?—I did not say how many there were, but it would be about nine, I think.

3792. You mentioned several places, I think, in which they were—Liverpool, Manchester, Birkenhead—— ?—Huddersfield, Sheffield, Southport.

3793. Anywhere else ?—No, that is all.

3794. Very widely spread over the north ?—Yes, very widely spread and well known.

3795. And do a very large business ?—Yes.

3796. In all those places ?—That is so.

3797. Tabloids have been enormously advertised by Messrs. Burroughs & Wellcome, have they not ?—Yes.

3798. And a very large trade is done in tabloids, is it not ?—I believe so.

3799. You have all along, and your employers, so far as you can tell, recognised "tabloid" as the trade mark of the Plaintiffs ?—Yes.

3800. And have always refrained from serving any other goods than Messrs. Burroughs & Wellcome's goods under an order for "tabloids" ?—Certainly.

3801. You were perfectly well aware that no other house in the country sold "tabloids" except Burroughs & Wellcome ?—They were the makers of them.

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3802. They were the only source of supply ?—Yes, exactly.

3803. And as a matter of fact the orders of your employers have been to the effect, have they not, that nothing was to be served for "tabloids" except the make of Burroughs & Wellcome, is that so ?—Yes.

3804. I suppose you cannot tell me what the trade of the other shops is, but I suppose the Piccadilly shop in Manchester is a big shop, is it not ?—It depends on what you call big.

3805. It does a large business ?—"Big" is a comparative term of course ; it is a shop in a prominent street.

3806. It is one of the largest in Manchester ?—One of the largest shops ?

3807. One of the largest chemist shops in Manchester ?—It is one of the large shops—I will not say one of the largest.

3808. One of the principal ones ?—Yes, certainly.

3809. And I suppose it does a big business ?—Yes.

3810. Do you know anything about the trade done in the other eight shops ?—I suppose it is to a great extent similar to what we do in Piccadilly.

3811. You know it is a very large trade ?—Yes.

3812. Is the trade in tabloids a large one ?—Fairly so.

3813. With regard to compressed medicines, is the bulk of your stock Burroughs & Wellcome's or some other stock ?—At the present moment, do you mean ?

3814. No. Of course you are quite right to tell me you have altered your trade, but I am speaking of the past two or three years ?—The great bulk of our stock of tabloids were tabloids of Burroughs & Wellcome's make.

3815. Tabloids are very widely asked for by the public, are they not ?—Undoubtedly.

3816. And you would not, as you told us, have served any article except Burroughs & Wellcome's in response to an order for tabloids ?—That requires some qualification perhaps.

3817. Does it ? From what I understood you to say before, I thought that that was your method of doing business. Do you say that you do supply the goods of other makers when tabloids are ordered, or that you do not ?—In cases where I am absolutely certain that Messrs. Burroughs & Wellcome's preparations are not intended, and I can see clearly what is intended, and it would be impossible to get them from Burroughs & Wellcome's, then I give what I can see is absolutely intended.

3818. Like the instance we heard of from another witness, where there was a patent medicine which no one could vend and where somebody had attached "tabloids" to that name, and you knew perfectly well Burroughs & Wellcome's could not give them. In cases of that sort you would fulfil the order for tabloids, although they were not of Burroughs & Wellcome's make. In every other case you would not justify yourself in doing so ?—No ; if I knew they were Burroughs & Wellcome's preparations and they made them, certainly their preparations would always be given.

3819. In every other case you think you would know a mistake must

have been made because it dealt with something that Burroughs & Wellcome's could not supply?—Evidently a mistake on the face of it.

3820. Do you suggest that there is a confusion in the mind of the public between "tabloids" and "tablets"?—I should rather think so.

A 3821. I see you smile. I daresay you feel some pride in having done your best to occasion that confusion?—No, not the slightest.

3822. You supply mainly compressed drugs of Burroughs & Wellcome's?—We have done?

3823. You have done. Never mind about the immediate present?—

B You put it in the present.

3824. I understand what you mean. Invariably—I will not say invariably, because that is not right, but usually in supplying Burroughs & Wellcome's goods you supply them under your own name in bottles, with your own name upon them and your own description?—Very frequently.

C 3825. A person comes in and orders tabloids, which you understand to mean the goods of Burroughs & Wellcome's?—Yes.

3826. Do you supply in answer to that order Burroughs & Wellcome's tabloids in a bottle labled "tablets," and with Thompson & Capper's name upon it?—Yes, frequently.

D 3827. And you say with a smile that the public are confused about the use of the word "tabloids" and "tablets." Do you not think that if all dealers deal in that way, it is very likely?—The general public ask for tabloids or tablets quite indiscriminately.

3828. I should like you to answer my question if you will. Such a

E course of trading by retail dealers is calculated to create confusion, is it not?—I do not quite see that it is.

3829. Do you not? A man, we will say, is recommended by his doctor or recommended by his friends to take tabloids, and he comes and asks for tabloids which you know to mean Burroughs & Wellcome's goods.

F Would you thereupon supply him with tablets with Thompson & Capper's name upon them?—In some cases.

3830. Yes, which are tabloids, the genuine thing he has asked for?—Certainly.

3831. Are you surprised if you create a confusion in his mind?—I do

G not think we create a confusion. The confusion is there to begin with in the person's mind. Whether they were tabloids of Burroughs & Wellcome's make or not, he would not understand.

3832. How long have you been in the habit of carrying on this method of trading?—Some years.

H 3833. How long have you been manager of this shop?—About 20 years.

3834. During the whole of that time you have not dealt in Burroughs & Wellcome's tabloids, but during 18 years you have, I suppose?—I

I suppose during the whole of the time.

3835. I said that because they were not put on the market until 1884, so it is short of 20 years. I limited it to while they had been on the market.—Yes, but we had their tablets before.

3836. You do not think that that method of dealing—I will not characterise it in any way at all—is likely to lead to confusion in the

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public mind?—No; we simply purchase the tablets from Burroughs & Wellcome as from any other persons.

3837. That is not the question I asked you. Having regard to the fact that the word "tabloid" is the name of Burroughs & Wellcome's goods, you do not think the practice of selling them under the name of "tabloids" and your firm's name upon them, tends to lead to confusion? —No, because whenever——

3838. Answer first whether you do or do not?—Whenever we have the tabloids ordered we tell them they are of Burroughs & Wellcome's make.

Mr. Justice BYRNE: You are asked to answer the question first, and then I assure you you may give the fullest explanation. This is a simple question. Put it again, please.

3839. Mr. NEVILLE: Do you, or do you not, think the method of dealing which you have described is calculated to lead to confusion in the public mind between "tablets" and "tabloids"?—I do not know that I am capable of forming an opinion upon the matter.

Mr. Justice BYRNE: Now if you would like to give your explanation.

Mr. NEVILLE: My Lord says that any explanation you would like to volunteer on the top of that I shall be pleased to wait until you have made it.

3840. Mr. Justice BYRNE: You may now say what you were saying?—What I was saying was that we purchased the tabloids or tablets from Messrs. Burroughs, Wellcome in bulk and bottled them, just the same as we might purchase them from any other firm and bottle them to save confusion in having two stocks, one labelled "tablets" and the other labelled "tabloids," multiplying our work. We had the same thing in the bottle, and we could sell them as tablets or tabloids, whichever anyone asked for.

3841. You do get compressed goods from other makers as well as Burroughs & Wellcome, I suppose?—Yes.

3842. Will you tell me the names of the firms with whom you deal? —Allen & Hanburys, Parke, Davis & Woolleys. There may be one or two more, but I cannot just recall them.

3843. There is a very great advantage in substitution, is not there, in the case of compressed goods?—To whom?

3844. To the retailer, I mean?—No.

3845. There is not?—No.

3846. According to your experience, you know I daresay something about the trade. Does a great deal of substitution go on in the chemical trade?—I can only speak of my own business, and we are very particular not to substitute.

3847. You have never heard of the case of inferior shops where they do such things?—I have heard from advertisements and so on, that we are warned against substituting.

3848. But outside that you have never had anything to lead you to suppose that any such thing as substitution took place?—I do not remember any case having come across my observation.

3849. Do you get advertisements from chemical manufacturers, who advertise their goods as a recommendation without a brand? Do you know of such manufacturers in the market?—I know a great many chemical manufacturers by name, but I do not remember their particular
A distinctive brands. They sell them in their own names, of course.

3850. That is not in the least the question I asked you. I think you must have observed that. Do you know of manufacturers who recommend their goods by the statement that they are sold under no brand?—I beg your pardon. I did not quite understand you—under no brand?

B 3851. Yes?—They would not advertise, I suppose. I do not know that at all.

3852. Then I will take it from you that you have never heard of such firms?—No.

3853. Do you know that there are firms who advertise their goods
C to be sold at a profit of 250 per cent.?—I have seen such advertisements.

3854. What do you suppose that means? Does that mean substitution or honest trade?—I do not know that it has any reference to either.

3855. No reference to either in your opinion?—No.

3856. Then if you find manufacturers advertising their goods as sold
D under no brand, and, we will say, offering a profit of 250 per cent. to the retailer, that would not lead to any suspicion as to what those goods were to be used for?—I should say that the goods were to be used as a chemist's own speciality, or to be given under a chemist's own name.

3857. It does not occur to you that they would be, at all events,
E available for substitution and a great temptation for substitution—I will put it in that way?—I do not think that chemists would substitute, if you mean tablets for tabloids.

3858. I thought we should get back to the particular case, but I was asking general questions as to the trade. I asked whether you were or
F were not aware of any substitution going on in the trade at all?—No.

3859. You do not know, perhaps, what I mean by substitution?—I know what my definition is.

3860. Then let us have your definition?—Substitution is supplying goods not of the manufacture asked for.

G 3861. Somebody else's goods instead of the goods asked for?—Yes.

3862. That is exactly my definition: so far we are at one. You have never heard of it in the chemist and druggist trade?—I have heard of it in advertisements of people warning chemists.

3863. We have heard of that, but, in fact, you do not think it exists?
H —I do not say that I have never come across it.

3864. Your suspicion would not be aroused by advertisements such as those I have told you of—of the 250 per cent. profit?—I should think they had some ground which caused them to issue such statements.

3865. Do you get advertisements of that kind?—Yes, plenty.

I 3866. Tell us how long ago is it since you gave an order for tabloids in bulk to Messrs. Burroughs & Wellcome?—Tabloids?

3867. Yes?—I think perhaps a few days before the Writ was served in this case.

3868. That was your last order in bulk?—I think so. I will not be sure how long it would be—quite recently before that.

3869. Assume that the other shops do something like the same trade that you do, what sort of an account should you expect to have with Messrs. Burroughs & Wellcome annually—you know for everything, not for compressed medicines only, but for everything; what should you expect the account would run to annually? I do not mean your own shop, but all the nine?—It would not run to a very great amount.

3871. What do you call a very great amount?—I say it would not be a very great amount.

3872. Tell me what you mean by that, that conveys no impression to my mind at all?—It would not be £100.

3873. Do you think it would be £30?—I do not think it would be much more—if as much as that perhaps.

3874. You mean if as much as £30?—I think it might be less than that even.

3875. Then why did you say £100?—I wanted to be outside the mark.

3876. You were outside your own judgment by three or four times?—I said I did not think it would be £100.

3877. What made the sudden change in your opinion—to come from £100 to under £30?—There was no change in my opinion whatever.

3878. You used £100 so as to be able to cover a purchase of under £30; is that right?—I have not the slightest idea of the quantity of tabloids they sold at the other branches. I think £100 would cover probably.

3879. I will put this question to you which my learned friend has suggested to me, but I do not quite follow how you manage. When tabloids are ordered the customer gets something called tablets with Thompson & Capper's name upon it?—Sometimes—not by any means always.

3880. Sometimes you sell the bottle itself?—We sell small bottles of many of the things of Messrs. Burroughs & Wellcome's putting up, with their own label on very often.

3881. In small bottles?—Small bottles of 25 and so on.

3881A. You may be right——

Mr. Justice BYRNE: I think I understood that; let me see if this is right, they are supplied with a certain number of goods by Messrs. Burroughs & Wellcome in large bottles?

Mr. NEVILLE: Yes.

Mr. Justice BYRNE: With their marks upon it; they are supplied with a certain number of others in small bottles. When they are supplied in the small bottles they sell those direct to the public with Burroughs & Wellcome's name upon them, and others they put into their own bottles and put their own labels.

3882. His last answer upset my idea about that. Burroughs & Wellcome do not send out any bottles without their labels upon them, do they?—I do not suppose so.

3883. Then I misunderstood your last answer. I understood you to say

the small bottles had not got Burroughs & Wellcome's mark upon them ? —I said "with."

3884. Then I misunderstood what you said. It was, as I suggested it to you first, that when you sell out of bulk—out of the big bottles they go out with Thompson & Capper's name and labels on ?—Yes.

3885. When they are sold in the small bottles they go out as you receive them with Burroughs & Wellcome's name and "tabloid" on them ?—Yes.

3886. That is plain enough. Now, with regard to the others, how do you secure that the assistant in the shop shall serve in answer to "tabloids," Burroughs & Wellcome's goods ? You see you are dealing in tablets of various kinds, and they sell these things under the name of "tablets" with Thompson & Capper's name upon the bottle. What check have you upon the assistants with regard to the tablets that you put inside the bottle that they sell as tablets ? Do you follow me ?—Yes, because practically all the tablets we put up in that form were tabloids of Burroughs & Wellcome's make.

3887. Practically that means, does not it, that there were others which were not Burroughs & Wellcome's make ?—Oh, yes, we have tablets of our own make.

3888. Then what is to stop the assistants from putting tablets of your own make into bottles with your own name and with "tablets" upon them, and giving them to the public in response to orders for tabloids ?—Because we do not make any tablets (I think I am right in saying that) of the same kind that Burroughs & Wellcome make—different medicines under different names.

3889. Is your suggestion this, that in no case have you got any—what shall I call it ?—alternative medicines to Burroughs & Wellcome's medicine tabloids ?—We have now.

3890. That is since the action began. I will not bother about that, as I understand all about that. But, before the action, had you only Burroughs & Wellcome's compressed preparation of any particular drug ?—No. As I said before, I think we had Allen and Hanbury's of one kind.

3891. You had surely in a number of cases both Burroughs & Wellcome's tabloids and tablets of your own or another make of the same drug —in many cases ?—No, not in many cases, certainly not.

3892. In several cases ?

3893. Mr. Justice BYRNE : There was chlorate of potash ?—One or two perhaps, at the outside.

3894. Mr. NEVILLE : Take chlorate of potash. There you had several compressed preparations of chlorate of potash—tabloids and other preparations in tablet form ? Only one other preparation in tabloid form —Burroughs & Wellcome's and another make.

3894A. That is enough for me. What precautions did you take to prevent the other make being sent out in Thompson & Capper's bottles with "tablets" upon them in response to an order for "tabloids" ?—We never had chlorate of potash tabloids except in Burroughs & Wellcome's small packages ready for retail.

3895. Let us test that. Just in the meantime take that, and you will

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see what my difficulty is. (Bottle handed to Witness). First of all, what are those ? Are those Burroughs, Wellcome & Co.'s tabloids, or are they somebody's else's tablets ?—I cannot say for certain.

3896. That is just what I thought. How is the assistant going to say ?—You mean if he can tell from the look of the bottle, and so on ? A

3897. Mr. Justice BYRNE : What Counsel means is : Suppose somebody came in and asked for tabloids of cascara segrada, how would the assistant know whether to give him that or not ?—We should make certain from the case where we got it from, or it would be in a different end of the case—the same case. B

3898. Mr. NEVILLE : In the same case ?—It might be in the same case.

3899. I will take your own suggestion, it was not mine. In the same case there are cascara segrada tablets and tabloids in bottles, both of them bearing the name "tablets," and both of them bearing Thompson & C Capper's name ?—Yes, there may be.

3900. In one of those bottles are tabloids, in the other are tablets ; a person comes into the shop and asks for cascara segrada tabloids. What is to prevent the assistant from handing the tablets instead of tabloids ?—Simply that he would not do it. I mean he would not do it at all except D by accident.

3901. But is not that an invitation to accident ?—I do not think so. If they were kept close together it might be.

3902. But in the same case ?—But a case is 6 feet long.

3903. How is he going to tell one from the other ? He has got to E go to one particular case to get the article ordered. In that case are two articles exactly the same in appearance, one of which he may sell, and the other of which he cannot sell without fraud ?—It would not be correct to have them in the same case. It would only be by accident they would be in the same case. F

3904. But of course, we know they accidentally get in the same case. The suggestion that they were in the same case came from you, you know. It is not much good telling us they do not get in the same case now——

3905. Mr. Justice BYRNE : I think what Counsel would like you G to tell him, if you can, is this : Have you any regular course of business in the shop whereby the assistant can always tell which is which in the bottle ?—We kept Burroughs, Wellcome & Co.'s tablets in the case as a regular thing. Those may have got into the case by chance. That is all H I suggested.

3906. Mr. NEVILLE : But I do not understand now. You keep Burroughs, Wellcome & Co.'s, and tablets, in the same case ?—We did not. It was not our custom ; in fact, for years and years we never kept anything but Burroughs, Wellcome & Co.'s at all.

3907. When you kept nothing but Burroughs, Wellcome & Co.'s you I could not sell anything but Burroughs, Wellcome & Co.'s that is clear, but I am dealing with the times when you did sell other goods of the same character. Let me put it to you in this way : There was nothing in

the appearance of the bottles or the names on the bottles to indicate to the assistant which were tabloids and which were not ?—No.

3908. But you suggest that there was some arrangement of the goods by which, if everything went right, he might be expected to know ?—The only tablets that we had that were not Burroughs, Wellcome & Co.'s in that case were Cascara.

3909. That does very well as an example. Take Cascara. There you had bottles of exactly the same appearance, one of which you could legally sell, and the other you could not sell, without fraud—in answer to an order for tabloids—both in the same case. What precaution did you take to prevent that fraud being perpetrated on your customers day by day ?—Now I understand what it is exactly. They were told that those in a certain corner were not Burroughs, Wellcome & Co.'s.

3910. Mr. Justice BYRNE: Was any mark put on the bottles in pencil, a dot, or little cross, or anything like that ?—No, my Lord.

3911. Mr. NEVILLE: Let us just put it clearly now. You know perfectly well that it would be a fraud to sell an article ordered as a tabloid, unless it was Burroughs & Wellcome's make. You take Burroughs & Wellcome's goods, and you put them in bottles, and you take other people's goods, and put them in exactly similar bottles without any mark to them at all; you put them both in the same case in your shop, and you leave it to the assistants to serve the customers ?—Yes, but I am there all the time.

3912. Now does this case surprise you ?—Very much.

3913. You admitted yourself that under such a system there must be accidents ?—No, I did not say so at all.

3914. Are we to take it that all the twelve cases we have proved, in which persons who went and asked for tabloids got other goods instead, were all accidents ?—I did not know that they had been proved to have been supplied with other goods.

3915. You may take it from me, so far, that they have. Having regard to your system of trade, would that number of accidents surprise you ?—It depends upon the proportion of those cases to the number. It might be a very small proportion out of the whole number.

3916. Which side of the case do you keep Burroughs & Wellcome's ?—The left-hand side.

3917. How much of the case is devoted to Burroughs, Wellcome & Co., and how much to other makers ?—I really could not say except this, that the case is divided by two doors, and we have to open a different door to get at one or the other. It is a case which opens in the centre, with two doors.

3918. Then is the whole of the cascara that you sell in the shop in that particular case ?—A few on the counter, perhaps, for customers to see.

3919. Now on which side do you put Burroughs & Wellcome's on the counter ?—We do not keep them on the counter at all.

3920. But I thought you told me they might be on the counter ?—I did not say anything about the counter about Burroughs & Wellcome's, I think.

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3921. You keep some cascara segrada on the counter?—Yes.

3922. Why do you do that?—So that customers coming in and waiting for goods can see that we have got them, and pick them up, and say "I will have a bottle of these tablets," or they may say tabloids for that matter.

3923. How can the assistant know whether those are tablets or tabloids?—We do not keep them now at all. We only kept the tabloids in the case where I said of Burroughs, Wellcome & Co.'s make.

3924. Mr. Justice BYRNE: Just to make it quite clear—Mr. Neville, you made use of the present tense—up to a certain time I understand he sold nothing but Burroughs, Wellcome & Co.'s. Was that so?—That was so.

3925. Up to what date was that?—Some time last year.

3926. You sold nothing but Burroughs, Wellcome & Co.'s goods until some date in last year?—I said some time last year.

Mr. Justice BYRNE: All you have been cross-examining to would go to something happening at the present time—since this action I was a little afraid there was some confusion.

3927. Mr. NEVILLE: The Writ was issued in January this year and some time last year you say you altered your method of dealing and began to take other manufacturers' goods. Surely you can tell me more definitely than "some time in 1902." When was it?—I suppose some about the middle of the year.

3928. Do not answer recklessly. What leads you to say so. What was the first order you gave, and who to?—I do not know. I should think perhaps some time in the spring or summer.

3929. Who did you give it to?—It was sent by post.

3930. Who to?—To Allen & Hanbury, I think.

3931. Allen & Hanbury's were the first goods you got?—I think so.

3932. You had your own tablets before that?—Yes, but homœopathic ones only practically.

3933. What do you mean by practically?—We had no cascara at any rate.

3934. How about chlorate of potash?—We never made those.

3935. So that within six months, at all events, of the time when you first began to stock other people's compressed goods, this action was commenced, and these accidents had happened?—Yes.

3936. So that, to put it shortly, there was nothing to show the customers whether they got Burroughs, Wellcome & Co.'s goods or whether they did not?—Except our word.

3937. You did not say anything to them about it. If they ordered tabloids you gave them the goods. You did not always accompany that with an explanation?—If they asked for it.

3938. They trusted to you to give them what they asked for?—If they asked for Burroughs, Wellcome & Co.'s?

3939. No, if they asked for tabloids?—I do not know that they asked for tabloids; mostly they speak so indistinctly—"tabloids" and "tablets" sound so much alike. We are close to the railway station, and they are mostly in a hurry.

3940. Stay your torrent of words and just attend to this question. You told us a moment ago you had never sold anything but Burroughs, Wellcome & Co.'s goods in answer to an order for tabloids ?—No.

3941. You told us you knew what the term meant, and that the A assistants knew perfectly well and were ordered to give nothing but tabloids in answer to an order for tabloids, and you never suggested there was any difficulty in understanding what the orders were. Now you say you never could tell whether it was "tabloids" or "tablets"?—No, we often could not.

B 3942. So that you often could not tell whether they wanted Burroughs, Wellcome & Co.'s or something else ?—Yes.

3943. Then what did you give them—something else on the chance ? —No, in practically every case Burroughs, Wellcome & Co.'s. If people asked for tablets we gave Burroughs, Wellcome & Co.'s tabloids, which C we concluded were the same thing.

3944. Are you speaking now of before the middle of 1902 ?—And after.

3945. Then you did not sell the other tablets at all, and if that is so, what was the good of stocking them ?—Stocking other makes ?

D 3946. Yes. If you gave them nothing but tabloids whether they asked for tabloids or tablets I do not see the use of stocking other makes ? —Because it was more convenient to stock other makes.

3947. How could it be if you were not going to sell them over the counter ?—Why should not we sell them over the counter ?

E 3948. Because you said whether the customer asked for tabloids or tablets you gave him Burroughs, Wellcome & Co.'s goods ?—I am talking of the practice when we had Burroughs, Wellcome & Co.'s goods only.

3949. I thought you would say that, therefore I asked you whether that referred to before the middle of 1902 or after, and you said before F and after ?—Yes.

3950. After the middle of 1902 we know you did stock other people's tablets ?—I beg your pardon. We are talking about "tabloids" generally, are we not ?

3951. Your duty is to answer my question. I cannot say you are G doing it, but perhaps you will try ?—Yes.

3952. Let me put it again. Do you say that after you stocked tabloids and tablets you served Burroughs, Wellcome & Co.'s goods in response to an order for either tabloids or tablets ?—Yes.

3953. Then if that is so, may I ask what was the good of stocking H any other maker's tablets ?—Because we found they were more convenient, and Burroughs, Wellcome & Co.'s preparations were being asked for in a less and less degree.

3954. I am sure you do not understand my question. Let me try it again. I will put it in another way. When, after you had begun to stock I other tablets, customers came in and asked you for tablets, what did you give them ?—We gave them the tablets we had.

3955. What tablets ?—It would be, if we had other makers than Burroughs, Wellcome & Co., another make of tablet to Burroughs, Wellcome & Co.'s.

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3956. Then you were wrong in telling me that whether you were asked for tablets or tabloids you always served Burroughs, Wellcome & Co.'s goods ?—We often do, even now.

3957. It is not a question of often but whether you always did as you said. Have you got the original stock that you got from Allen & Hanbury in your shop now ?—No.

3958. Then you have sold it ?—We have sold it.

3959. You sold it in response to orders for tablets ?—Yes.

3960. And tabloids ?—No, I think not.

3961. Only in accidental cases ?—Accidental cases.

3962. But the customers could not possibly tell, except by trusting to your honour, whether they were getting tablets or tabloids ?—That is so.

3963. Now with regard to this prescription. Is it not the practice to make up a prescription from the prescription itself ?—It would depend upon the circumstances.

3964. Just think. Is it not the general practice to make up a prescription from the prescription itself ?—I can only answer in the same way again.

3965. What object is there in making up the prescription from a copy instead of the original document that you have before you ?—The point would be that I would be very likely be copying the prescription in the book and then writing the label whilst the assistant was making it up from the book.

3966. Will you explain to us how you can be copying from the same document which is enabling the man to make up his prescription at the same time ?—I meant to say, and I think I did say, that he would be making it up from the book whilst I was writing the label, from the prescription to go on the bottle.

3967. How long an operation is it to write down "Captain James. R. Chlor. Pot. Tab. 40." Is it not the fact that the ordinary course of business, when a prescription is handed in, is for it to be made up from the document that is handed in ?—We do it in both ways.

3968. Just look at this, and you will see within three orders there are two for tabloids—one is next but one to the other. (Book handed to Witness) ?—Yes.

3969. There you have written "tabloid" in full ?—Yes.

3970. No "B. W. & Co." ?—No.

3971. According to your notion and your knowledge there was no object in putting "B. W. & Co." in the book at all ?—In this case it probably was not in.

3972. It is not in the book there, but it meant to your mind precisely the same thing whether "tabloid" was ordered or "tabloid B. W. & Co."? —I should give Burroughs, Wellcome & Co.'s tabloids for this.

3973. But it meant precisely the same thing to your mind if "tabloid" was used, or "tabloid B. W. & Co." ?—Yes.

3974. You knew they meant the same thing ?—I knew myself.

3975. Therefore there was no distinction in your mind whatever between giving goods in answer to an order for "tabloids" and in answer

to an order for "tabloids B. W. & Co."?—They meant the same thing to me.

3976. They meant exactly the same thing, and in either case you knew it was a fraud to pass off any other goods instead of the goods of A Burroughs, Wellcome & Co.?—Yes.

3977. So that the supposed distinction between "tabloid B. W. & Co." and "tabloid" does not exist in your mind, at all events?—They have kept me posted up in that matter, so it does not exist in my mind.

3978. So that all these instances we have got stand on exactly the B same footing—the people in the shop knew perfectly well what "tabloids" meant?—Yes.

Re-examined by Mr. WALTER.

3979. Prior to the date of this action will you tell my Lord how many preparations in tablet or tabloid form, other than Messrs. Bur- C roughs & Wellcome's, you had in your shop?—I do not know exactly—over 100.

3980. Before the date of the action, other than Messrs. Burroughs & Wellcome's?—Over 100.

3981. Prior to the date of the action?—Yes, the homœopathic tablets.

D 3982. I was not referring to those at all. I mean of the things that Burroughs & Wellcome sell?—Very few indeed—perhaps four or five.

3983. Can you give us the names?—They would be cascara segrada, chlorate of potash, bicarbonate of soda, bicarbonate of potash, and perhaps soda mint.

E 3984. That is exactly what I am told. Have you, in fact, had orders for Messrs. Burroughs & Wellcome's goods by another name than "tabloid"? Did people always call the goods "tabloids" when they came in?—No, "tablets" sometimes.

3985. In the event of their asking for "tablets," and of their not F being soda-mint, sodium carbonate, potassium carbonate, or chlorate of potash, what goods would you supply under an order for "tablets"?—Burroughs, Wellcome & Co.'s.

3986. In reference to the firms from whom you had purchased goods, I think you mentioned Allen & Hanbury?—Yes.

G 3987. Are they manufacturing chemists with a reputation at least as high as Messrs. Burroughs & Wellcome's?—Decidedly.

3988. And whose preparations are household words in the medical trade?—Yes.

3989. Who were the others—Parke, Davis & Co., I think you H mentioned?—Yes.

3990. Are Messrs. Parke, Davis & Co. a firm with an equal reputation to Messrs. Burroughs & Wellcome?—Yes, they are in the front rank.

3991. Are the goods from both of these firms of the very highest I quality?—Certainly.

3992. As regards Poth & Co., did the book which was handed to you come from your possession at all?—I do not think so.

3993. Had you in fact looked up the lists of Messrs. Poth & Co.

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upon which questions were asked you ?—No, I had not looked them up at all.

3994. A bundle of written orders has been handed in to my Lord. Have you got a copy of the list ?—I have.

3996. Is that a list of all the various drugs which appear in those orders, and which are ordered in writing as "tabloids" ?—Yes, I think so.

3997. In addition to those written orders have you received verbal orders for the goods mentioned in that list ?—Yes.

3998. Under what term or description are those orders given ?—They would come in and ask for "a bottle of your indigestion tabloids," or "of Thompson & Capper's indigestion tabloids," and so on.

3999. In cases of that sort, in which the word "tabloid" is used, what goods have you supplied ?—Our own speciality.

Mr. WALTER : I should like that list to go in, my Lord. That is the list of the various things with all the numbers referring to it. There has been a mark put on the first page, opposite "indigestion tablets," they are called, but there is a pencil mark put at the side, "tabloids." As a matter of fact, they are all labelled "tablets."

(Exhibit put in and marked K.C.B. 5.)

Mr. J. R. Young.

Mr. JOHN RYMER YOUNG, sworn.

Examined by Mr. WALTER.

4000. I understand you carry on business as a chemist and druggist at 40, Sankey Street, Warrington, and you have had 30 years' experience ?—Yes.

4001. I believe you are a member of the Council of the Pharmaceutical Society ?—I am.

4002. You have known drugs put up in a compressed form for many years ?—Yes.

4003. You have been acquainted, I take it, with the literature of Messrs. Burroughs, Wellcome & Co. ?—Yes.

4004. And you knew of their registered trade mark, "Tabloid" ?—Yes, I know of it.

4005. Have you from time to time had orders from medical men in which the term "tabloid" appears ?—Yes.

4006. Have you made any enquiries as to what was intended ?—No ; when "tabloid" is ordered I have invariably used tabloid when practicable.

4007. I was just going to say when practicable. That is exactly what I thought you were going to say. Now what do you mean when you tell us they were not practicable ?—Because sometimes we had things ordered which Messrs. Burroughs & Wellcome did not list or stock or make, but they are things as to which we know what the doctor means. From my personal knowledge of doctors I know that.

4008. What do you do then?—We dispense the article the doctor means.

4009. There are two, I see, of this year. Just look at these. Are those prescriptions of the kind to which you refer?—Yes.

A 4010. Is the word "tabloid" used in those cases?—In each case.

4011. Are the goods there mentioned the goods of Messrs. Burroughs & Wellcome?—No, they are not.

4012. In neither case?—In neither case. One is antikamnia and the other aminol.

B (Exhibit put in and marked J.R.Y. 1.)

4013. I believe that with regard to the aminol, you sent up to Messrs. Burroughs & Wellcome, and they prepared for you some compressed aminol?—Yes.

C 4014. Is this compressed aminol that they prepared for you (bottle handed to Witness)?—Yes, I know this bottle.

4015. First of all, is this aminol as put up by the proprietors of the medicine (handing packet to the Witness)?—Yes; this is put up by the American Aminol Company, who are the proprietors of the secret D medicine.

4016. Did you subsequently tender on an order for aminol the goods put up by Messrs. Burroughs & Wellcome?—I did, but not as a prescription.

4017. No, subsequently?—To a doctor who asked me for aminol E tabloids.

4018. Who asked you for aminol tabloids?—Yes.

4019. Would he accept them?—He refused them as not being what he wanted.

4020. The order given you by that doctor was for aminol tabloids? F —Certainly.

Mr. Justice BYRNE: This was not the exact thing.

Mr. WALTER: No, the bottle is what was tendered.

Mr. Justice BYRNE: I thought this thing was. (Indicating packet.)

G Mr. WALTER: No, that is the genuine thing. The bottle is what we had made up by Messrs. Burroughs & Wellcome and was tendered to a doctor afterwards.

Mr. Justice BYRNE: A thing like this is what he wanted, I mean, because this particular thing is not the same. I think you are liable to a H very heavy penalty.

The WITNESS: That is a sample. It is sent out really to the trade in bottles holding an ounce. That is only a sample.

4021. Mr. WALTER: You actually had aminol put up for you by Burroughs & Wellcome under an order for aminol tabloids. You supplied I the goods, and they were rejected as being not of the kind required?—That is so.

4022. You come into contact a good deal with the public?—Yes.

4023. Do you serve retail yourself?—I do.

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4024. From your business relations with the public, what do the public mean by the word "tabloid"?—A compressed form of drug.

4025. Anything further than that?—No, they use the word absolutely indiscriminately—"tabloid" or "tablet" sometimes—even asking for tablets and possibly meaning tabloids, but using it quite indiscriminately— usually tablets. I do not get often asked for tabloids.

4026. I take it that you in common with other chemists supply tabloids?—Always, as I have said, with those exceptions which I have mentioned.

Cross-examined by Mr. MOULTON.

4027. You mentioned that you offered the Burroughs & Wellcome aminol to a doctor who asked for "aminol tabloids"?—Yes.

4028. Of course, that was only following your regular practice of giving Burroughs & Wellcome's goods when tabloids are asked for where it is practicable?—Yes.

4029. And you found that this doctor did not mean the particular goods that you tendered to him?—Yes, he did not mean tabloids.

4030. He did not mean tabloids; he had made a mistake?—All the doctors make mistakes then of that type.

4031. I see that these two orders for aminol tabloids that have been shown to his Lordship are both of this year?—Quite right.

4032. When did aminol tabloids first come out?—Years ago, I do not really remember.

4033. But these are the only two that you have where they are called "tabloids"?—Those are the only two where I could get the original prescriptions back. There are several in my books, but we give the prescriptions back as already stated.

Re-examined by Mr. WALTER.

4034. You have told my Lord that all doctors make mistakes. What do you mean by that?—They frequently make mistakes. It is a well-known fact that if chemists did not use their discretion and their judgment, the population would be certainly reduced.

4035. What is your experience then as regards the use of "tabloids" by medical men?—They use the word absolutely indiscriminately. I am in a position to say that.

Mr. MOULTON: You cannot ask that.

Mr. WALTER: This is the very question you asked. I took it down in your cross-examination.

The WITNESS: I am speaking of knowledge gained by actually asking the medical men with whom I am brought into contact, and not less than five out of six disclaim any idea——

Mr. MOULTON: You cannot ask that.

Mr. WALTER: I have not asked it.

Mr. MOULTON: I beg your pardon.

Mr. WALTER: I have never asked the question. He is giving us information.

The WITNESS : I thought you wanted the whole of the truth.

4036. Mr. WALTER : You must not tell us what they said to you, but in your experience of the use of the term "tabloid" by the doctors with whom you have come into contact, what do you gather that they
A mean by the term "tabloid"?—A compressed form of drug, using the word as another would use "pill" and another "cachet"—in form they desire the drug to be. May I say that we occasionally also get telephone orders for certain things, and we ask: "Will you have it in cachets or tablets?" The answer is: Make it up into "tabloids." They do not mean
B tabloids; they mean tablets, and we are continually doing it.

Mr. CHARLES THURSTON HOLLAND, sworn.

Examined by Mr. WALTER.

4037. You are in practice at 2A, Prince's Road, Liverpool; you are a Member of the Royal College of Physicians and of the Royal College of
C Surgeons, and have been in practice for the last 14 years?—Yes.

4038. How long have you been acquainted with the word "tabloid"?—I do not know at all—a good many years.

4039. How do you understand the term "tabloid"?—I know now, of course, that it refers absolutely to Burroughs & Wellcome's goods.

D 4040. When first did you ever learn that?—I should say that it was within the last two years that I knew for certain they claimed to be entitled to use it as applying to their goods alone.

4041. Two years?—I put that roughly.

4042. Have you known of the use of the term before that time?—
E Oh, yes.

4043. Have you yourself used the term before that time?—Oh, yes.

4044. In what sense prior to your learning about Burroughs & Wellcome's have you used the term?—Only to describe the form in which the drug or drugs were to be put up. I do not mean that it necessarily
F means compressed drugs. I mean before one knew that Burroughs & Wellcome claimed the absolute right to it.

4045. You have had a great deal of experience with regard to patients and to the public. What has been your experience of their understanding of the term tabloid?—Simply referring to the shape or form in which the
G drug or drugs are put up—almost without exception.

4046. What is the form you use in your prescription? Do you specify drugs put up in that form?—If I want to have Burroughs & Wellcome's drugs I always put "B. W. & Co."

4047. To use the stock phrase that was used yesterday by my learned
H friend, Mr. Levett, from your meeting with your brother professionals, what, so far as you can learn, has been their view of the word "tabloid"?—The same as my own exactly.

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Mr. C. T. Holland.

Cross-examined by Mr. MOULTON.

4048. I see in your affidavit you say that, with the exception of cascara, you always prescribe Burroughs & Wellcome's goods, and used to put "tabloid, B. W. & Co." ?—Yes, with the exception of cascara, the reason being that I like Burroughs & Wellcome's goods, and I habitually use them, but I have always written "B. W. & Co." A

4049. Then there could be no possible mistake. If you put B. W. & Co. there could be no possible mistake ?—Well, I should think that there could not.

4050. I should hope not. When you were prescribing for cascara you used to call it "tabloid cascara segrada" ?—Sometimes if I wanted Burroughs & Wellcome's at that time I should have specified "B. W. & Co." If I simply meant you can supply what you have got, no matter whether made by yourself or by Burroughs & Wellcome, or Parke, Davis, or Allen & Hanbury, or anybody else up to a certain period of time, it was comparatively recently, I wrote "tabloid" meaning that. B C

4051. You did not know at that time that any respectable chemist would understand that to be B. W. & Co. whether you wrote it or not ?—No, as I said, up to two years ago I was not aware that Burroughs & Wellcome claimed the absolute right to distinguish their goods. Since then, of course, I do know. D

4052. I quite understand. You never used "tabloid" meaning that it was not to be Burroughs, Wellcome & Co., but in the case of cascara you used not to take the trouble to put "B. W. & Co." ?—Cascara is such a common drug, one is always using it. That is the reason. E

Re-examined by Mr. WALTER.

4053. Tabloid, without the initials "B. W. & Co.," did that to your mind convey the goods of any particular firm ?—Not up till about two years ago.

4054. Then you heard of the claims made by Messrs. Burroughs & Wellcome ?—I think they took good care that all doctors should hear of it. F

4055. It was then, was it not, that they took care that doctors should hear ?—Yes, by the advertisements.

4056. Mr. Justice BYRNE: I wish you would tell me this. You say you consider the word "tabloid" refers to shape or form—I think that was what you said ?—Yes. G

4057. What shape or form ?—It is used indiscriminately by patients and doctors—at least amongst my doctor friends—for these little things. It does not matter whether they are square or round or oval or anything else, so long as they are things about that size and look like tabloids—they are called "tabloids"—I think that is common notoriety. H

4058. You see what I want you to explain is this, because you thought it referred to shape or form—I was only asking what shape or form—— I

Mr. MOULTON: A lozenge.

4059. Mr. Justice BYRNE: Mr. Moulton, please, I am asking the questions?—Lozenges are a little bit larger. What I mean is that people when you hand them a little bottle with little tabloids or tablets or whatever you call them about that shape or size, do not look to see whether they are squares or what.

4060. Mr. Justice BYRNE: Or discs or rounds?—Or whether the edges are cut off. They call them all tabloids. If they were quite round they would call them pills if they were small enough.

4061. What it comes to is that, so long as it is a medicine made up in a solid shape and not too large——?—Yes.

4062. It would refer to any shape?—Yes, except the round one, which they would probably call pills.

4063. The absolutely spherical things they call pills?—I think no one would discriminate between them except in that way.

4064. You think that "tabloid" refers to any form ranging downwards from anything less than a sphere to any other shape?—Any of the ordinary shapes that are made. I have tried the experiment, my Lord.

4065. I want to get to the bottom of what it does convey to your mind. Take a carraway comfit, such as used to be made up.—I do not know those.

4066. Do not you remember the cinnamon stick that was broken off into small pieces?—No.

4067. I am speaking of sweets not drugs—you do not remember any of those?—No, peppermint was my particular thing.

4068. Lozenges, you say, take a particular shape—they often apply that to a round thing?—There are many lozenges to which the term "tabloid" would be applied by people.

4069. Which sort, for instance?—If it was a smallish flat thing, roundish in shape as a lozenge generally is made, with a square edge, quite flat, many people would call those tabloids.

4070. There were some things the other day produced which were called "Menthol discs," do you know those—they are literal discs, I think?—Are there bottles here with the things in?

4071. I had one?—It is a little difficult to draw the line.

4072. You cannot name any special shape which you say you specially attribute this to, and you do not attribute to it either the meaning that it need necessarily be compressed?—I am talking of my experience of what other people mean and what they apply to "tabloids." I know now that the word "tabloid" refers to Messrs. Burroughs & Wellcome's goods, but I say that the ordinary individuals I come in contact with, the ordinary people who come in to me, and I say, "Will you have it in tabloid form?" or "Can you swallow tabloids?" it only conveys to those patients a little flat or flattish shape in the form in which the drug or drugs is put up, and the patient does not understand by that that I am referring to the specific make or drug by Burroughs & Wellcome.

Mr. Justice BYRNE: Flat or flattish shape—very well.

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Dr. C. W. Hayward.

Dr. CHARLES WILLIAMS HAYWARD, affirmed.

Examined by Mr. WALTER.

4073. I think you practise at 117, Grove Street, Liverpool. You are a Doctor of Medicine and a Master of Surgery of Edinburgh University, and a Diplomate of Public Health of Cambridge University, a Member of the Royal College of Surgeons and Licentiate of the Royal College of Physicians ?—Yes.

4074. And I think you are also a Member of the English Bar ?—I am.

4075. I think you have been in practice for the last 17 years ?—Yes.

4076. When first did you become acquainted with the word "tabloid" ?—Soon after I started practice. Tablets were in use when I started practice, and one can scarcely say when the word "tablet" merged into the word "tabloid." Gradually "tabloid" came into use for the same things that we had known as "tablets" when I was qualified.

4077. Did you first become acquainted with these goods as indicating the goods of any particular manufacturer ?—I think my first introduction was to the hypodermic tabloids of Burroughs, Wellcome & Co.

4078. Now, in ordering goods, if you desire the goods of Messrs. Burroughs, Wellcome & Co. how do you order them ?—I invariably put in brackets, under the name of the drug, B. W. & Co.

4079. In meeting patients, in what sense do you find the word "tabloid" used ?—To describe a dose of the drug put up in some convenient form that can be swallowed easily—really an improved form of the old pill. The old spheroid or pill has been made smaller—perhaps compressed and made flatter and more easily taken.

4080. Do you find in your practice that the term is used as indicating the goods of a particular firm ?—Certainly not. All our medicines which are supplied by Thompson & Capper and by any other manufacturing homœopathic chemist in the country are nearly all made up also in tabloid form, and these forms are known by the patients, and asked for, as "tabloids."

4081. They are named as "tablets" ?—As tablets they were introduced to us.

4082. But as described to you by patients, how do you find them called ?—We call them tabloids mostly.

4083. As regards your own use of the term, how do you yourself use the term "tabloids" ?—I should call all drugs made up in that shape tabloids indiscriminately, whether they were made by Burroughs, Wellcome & Co., or any other firm.

4084. And if you wish the goods of Messrs. Burroughs, Wellcome & Co., what steps do you take to ensure that such goods are supplied ?—Invariably ask for, if I am getting it for myself over the counter, or put on the prescription, either "B. W. & Co." or "Burroughs, Wellcome & Co." in full.

4085. I take it that from time to time you meet a good deal with your brother professionals ?—Yes.

4086. So far as as your experience goes, how do you find their experience of the word is ?—I do not know of one who really restricts it to A the products of any one firm. No medical man that I know would think of calling any of these little hypodermic things that are put up by Parke, Davis, or Oppenheimer, or other makers. They would call them indiscriminately hypodermic tabloids.

4087. And if the goods of a particular person are required, how would B they be obtained ?—I should put the initials of the firm there myself. I very often prefer to have Parke Davis, and I always ask for that, or write it.

4088. Mr. Justice BYRNE : What name do Parke Davis give it ?—I think they call theirs hypodermic tablets, but it is impossible to tell C them by looking at them. They are all put up in just the same little hypodermic tubes.

4089. Mr. WALTER : I believe you are something of a philologist Dr. Hayward ?—I do not know that I am particularly.

4090. I was told you were rather ?—Of course I am naturally very D interested in the termination, but that termination occurs so constantly in philology or pathology, or even in anatomy, that one is not surprised that a thing should be called "tabloids."

Cross-examined by Mr. Neville.

4091. Do you get your drugs altogether, Dr. Hayward, from E Thompson & Capper ?—No, certainly not.

4092. You do get drugs from Thompson & Capper ?—Certainly.

4093. How long have you done so ?—17 years last August, when I started practice.

4094. Then you have always been to them ?—Yes, principally.

F 4095. From time to time you have ordered tabloids from them, or prescribed tabloids ?—Yes.

4096. And being under the impression that by such prescription or by such order you got the goods sometimes of one make and sometimes of another ?—No, in general I very seldom would order them for patients. G I generally meant their own tablets—that is, manufactured by Thompson & Capper. The bulk of my prescribing would be for medicines not made by Burroughs, Wellcome & Co.

4097. Are you a homœopathic doctor ?—I am. That is what they call us.

H 4098. I did not wish to put a name to you you did not like, but you are not an allopath ?—No.

4099. So that you have never ordered tabloids ~~for~~ from Thompson & Capper ?—Yes, I have.

4100. And did you know that whenever you ordered tabloids ~~for~~ from I Thompson & Capper you got Burroughs, Wellcome & Co.'s make ?—No.

4101. It might be anybody's make ?—No.

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Dr. C. W. Hayward.

4102. So you never found out until last year that they kept nothing but Burroughs & Wellcome's make ?—No.

4103. Can you give me an instance when you have got other makers' drugs under an order for "tabloid" from Thompson & Capper ?—I have ordered tabloids of medicines often for patients, but they have been for drugs that Burroughs, Wellcome & Co. do not put up. A

4104. I daresay you are responsible for a very large number of these things they have put in. We have had a good many orders for homœopathic medicines ?—No, you see those come from a Manchester shop and I come from Liverpool. B

4105. Your first recollection of tabloids I understand to be in connection with hypodermic tabloids ?—Yes.

4106. You knew those were made by Burroughs, Wellcome & Co., did not you ?—Yes, but ever since they have been made by them they have also been made by other firms, exactly the same shape, same drug, same dose. C

4107. You may be right about that—I am not quite sure. You get the diaries, I suppose, that are sent round to medical men, and so on ?—Yes.

4108. Have you had Burroughs, Wellcome & Co.'s diary ?—Yes, most years, I think. D

4109. Have you ever noticed their claim to the word "tabloid" in that ?—I have noticed that they do use the word "tabloid."

4110. As a trade mark ?—It was only distinctive. It is only just recently I saw the very small words at the side, "trade mark." E

4111. Never mind about quite recently, but you have for a great many years received their diary ?—Yes.

4112. Did you ever notice that they claimed that as their trade mark ?—I knew they sold under that name, but until recently it never struck me it would be on the register. F

4113. You knew it was their name, but you thought it might be somebody else's name as well ?—I knew it was their name, but I never suspected that such a name could be on the register.

4114. Apart from that you only knew it in connection with Burroughs, Wellcome & Co.'s goods ?—No, I have ordered Parke Davis's hypodermic tablets. G

4115. For how long ?—I have always done so, because I prefer them to the others.

4116. You never have been supplied with Parke, Davis's tabloids ?—No, I have asked for them over the counter. H

4117. You have not sent written orders for them ?—No.

4118. You cannot point to anybody who has made tabloids but Burroughs, Wellcome & Co. in your whole experience ?—They all make them, but they do not apply the name to them.

4119. "Tabloid" has been associated in your mind with Burroughs, Wellcome & Co. ?—Yes. I

4120. But you did not know until recently that they had the exclusive right to them ?—No.

Re-examined by Mr. WALTER.

4121. And you have used "tabloids" constantly to describe the goods of other people?—Constantly.

4122. You have ordered goods from Thompson and Capper, which were not supplied by Burroughs, Wellcome & Co. as tabloids?—Yes.

4123. Ordered Parke, Davis & Co.'s as tabloids?—Certainly.

4124. And received Parke, Davis & Co.'s goods?—Yes.

4125. And received Thompson & Capper's goods?—Yes.

(Adjourned to to-morrow at 10.30.)

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
25th November, 1903.

BEFORE
MR. JUSTICE BYRNE.

Burroughs, Wellcome & Co.

—v.—

Thompson & Capper.

IN THE MATTER OF THE TRADE MARKS NOS. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER OF THE PATENTS DESIGNS AND TRADE MARKS' ACTS, 1883-1888.

FIFTH DAY.

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MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Plaintiffs' Solicitors

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Defendants' Solicitors.

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C.A.T. (6)

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
Thursday, November 26th, 1903.

BEFORE—
MR. JUSTICE BYRNE.

BURROUGHS, WELLCOME & CO.

— v. —

THOMPSON & CAPPER.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY, appeared on behalf of the Plaintiffs (instructed by Messrs. MARKBY, STEWART & Co.).

Mr. A. J. WALTER, and Mr. J. H. GRAY, appeared on behalf of the Defendants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

SIXTH DAY.

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Mr. WALTER: Your Lordship may remember that there were five things made from prescriptions mentioned yesterday which you wanted to see. Those are they. (Handed to his Lordship.)

Mr. Justice BYRNE: Yes. Do you put them in?

A Mr. WALTER: Yes, my Lord.

Mr. Justice BYRNE: They were tablets of sulphur. They were homœopathic medicines mentioned in prescriptions.

Mr. WALTER: There were five copies of prescriptions, and your

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Lordship asked what they were like. You will see what took place in the middle of page 291 of the Notes.

Mr. LEVETT: Do you mean at Question 3703?

Mr. WALTER: Yes—exhibit C.K.B. 3.

Mr. Justice BYRNE: Yes; I asked: "Have you got one of them?" and the Witness said: "We have similar tablets. (Mr. Walter): What do they look like? They are flat tablets. Q. And you can get some more, if necessary, so that my Lord can see them?—Certainly, they will be the same shape as this."

Mr. LEVETT: May I see them?

Mr. Justice BYRNE: Yes. They all appear to be flat in shape.

Mr. WALTER: Yes; they are all things mentioned in the prescription. We telegraphed for them last night.

Mr. LEVETT: We should like to look at them. (Handed to learned Counsel.)

Mr. Justice BYRNE: They all appear to me to be flat, and I rather think the witness said so.

Mr. LEVETT: I only wanted to verify the fact by my own eyes.

Mr. WALTER: They had better be marked C.K.B. 3a, and then they will be identified with the prescriptions.

Mr. Justice BYRNE: Yes.

(Put in and marked C.K.B. 3a.)

Mr J. Watson.

Mr. JAMES WATSON, sworn.

Examined by Mr. WALTER.

4126. You are a Bachelor of Medicine and a Master of Surgery of Edinburgh University?—I am.

4127. You practise at 32, Prince's Road, Liverpool?—I do.

4128. And you have been in practice there for some years?—Yes.

4129. In your practice do you keep any unmedicated vehicles for saturating with drugs?—I do.

4130. What do you call those?—Tabloids.

4131. Have you done that for any time?—Since the month of September, 1897.

4132. In putting up those for your patients, what do you put on the bottles?—I put on printed labels which I have had during that period with "two tabloids to be taken so many hours."

4133. You fill in the number of hours?—I fill in the number of hours.

4134. Mr. Justice BYRNE: Have you any specimens of those?—I gave them to Counsel.

Mr. Justice BYRNE: And specimens of the actual vehicles?

Mr. WALTER: Yes, my Lord, we have them here.

4135. Is that one of your labels and are those the vehicles which are saturated. (Handed to Witness)?—Yes, that is my label.

Mr. WALTER: Here is a bundle of labels and a box of vehicles. They can be put in.

4136. Mr. Justice BYRNE: Are those the actual things themselves?—Those are of a similar nature to what I use.

A 4137. Of a similar nature and appearance?—Yes, and appearance. I have no doubt they are the actual specimens I have.

4138. Is this a box of them?—It is.

Mr. Justice BYRNE: We had better put the box in, and look at the others as examples.

B (Labels put in and marked J.W. 1.)

(Box of specimens put in and marked J.W. 2.)

Mr. LEVETT: Are these vehicles?

Mr. Justice BYRNE: Yes.

Mr. WALTER: Those are tabloids. The word I used was "vehicles," C so as not to lead the witness.

Mr. Justice BYRNE: Yes, that is quite accurate.

The WITNESS: Perfectly accurate.

4139. Mr. LEVETT: Are these medicated or not?—They are unmedicated.

D 4140. Mr. WALTER: Your practice, I think, is largely in homœopathy?—It is entirely so.

4141. May I take it that your vehicles labelled "tabloid" have been distributed pretty considerably?—They have.

4142. What do you understand by the term "tabloid"?—Medicine E put up in a compact compressed form and in the shape of or resembling a table.

4143. Mr. Justice BYRNE: What sort of a table?—A round table.

4144. A flat one?—Yes, a flat one.

4145. Mr. WALTER: Do you know the word "tablet"?—I do.

F 4146. What distinction, if any, do you draw between "tablet" and "tabloid"?—Personally I think "tablet" applicable more to the flat and angular as distinguished from the flat and round; but I believe they are used as a matter of fact as synonymous, interchangeable terms.

4147. When you say they are used in that way. Speaking from G what experience do you tell my Lord that you find the words "tablet" and "tabloid" are used interchangeably?—By both chemists and patients speaking of them in that way.

4148. When did you first hear that Messrs. Burroughs, Wellcome & Co. had made any claim to "tabloid"?—Only, roughly speaking, within H the last 18 months. I would not be sure. My attention was first drawn to it by a special green slip which I happened to notice in a diary which I got, in common with other medical practitioners, from that firm. They inserted a green slip on which the attention of the medical profession was drawn to that fact.

I 4149. I take it from time to time you see brother medicals?—I do.

4150. Will you tell us, so far as you are able to observe of them, what their understanding of the term "tabloid" is?—Similar to mine.

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4151. Do you deal with a Mr. Anthony Smith Buck. Have you ordered goods from him ?—I have, occasionally.

4152. That is one of the witnesses called by my learned friend—page 214. I will read his evidence afterwards. Have you ever given an order to Mr. Buck for "hypodermic tabloids, P. D. & Co." ?—— A

Mr. NEVILLE : Was that an order in writing ?

4153. Mr. Justice BYRNE : Have you given orders in writing ?—Not in writing—verbal orders in Mr. Buck's shop.

4154. For what ?——

Mr. WALTER : "Hypodermic tabloids, P. D. & Co." ?—The precise B form of order was "Parke, Davis' hypodermic tabloids."

4155. What did you receive ?—I received Parke, Davis' hypodermic tablets.

4156. Was any difficulty raised or question asked when they were given to you ?—None whatever. I was shown the case and allowed to C choose what I wanted.

Mr. WALTER : Your Lordship will see the questions on page 216 to which I am alluding.

Cross-examined by Mr. LEVETT.

4157. To deal with the last point first, how were these tabloids, as D you say, given to you, in bottles or boxes or what ? —In the usual small long narrow tubes in which they were put up, which Parke, Davis send them out in.

4158. What was outside the long narrow tube—what word ?—Their usual label. E

4159. What is their usual label ? Does it contain the word "tabloids" ?—I believe not.

4160. Does it contain the word "tablet" ? —I believe it does.

4161. Then you knew you were getting what Parke, Davis & Co. called a hypodermic tablet ?—I believe so. F

Mr. Justice BYRNE : Have you got any of theirs ?

Mr. LEVETT : No, we have not.

4162. Mr. Justice BYRNE : What is the shape of them ?—They go into long little tubes.

4163. What is the shape of the actual thing ?—Perfectly flat, very G small rounded.

4164. That is to say they are not convex at all ?—They are not convex at all ; they are rounded.

4165. Mr. LEVETT : Just to finish that can you tell my Lord when this was ?—That I am sorry I cannot say definitely, but I should say from H recollection within the last nine months.

4166. The order you say was given verbally ?—Verbally.

4167. Where was it given ?—In Mr. Buck's shop.

4168. Do you remember was it Mr. Buck himself ?—No, I specified that a few minutes ago—at least, I think I did. It was not by Mr. Buck I himself ; it was one of his assistants.

4169. I think you told my friend that you have been in practice eight years ?—Roughly speaking.

4170. Before that were you at all engaged in the drug trade ?—I was a doctor for three years before that.

A 4171. Three years before you were in practice as a doctor ?—Yes, I spent the first year in special work. I spent the first year in special study in my university. The second year I was house surgeon in a hospital and the third year I travelled. Some of those times were 10 months, but some actually a year, but that is roughly speaking.

B 4172. You did not go into practice at once ?—No, I intended to specify that.

4173. Before you practised did you deal in drugs ?—Before I started in general practice I was house surgeon for a year.

4174. Before you were house surgeon did you commence practice C then ?—I started after I got my degree.

4175. Did you start before ?—Yes, my father was a practitioner, and I dabbled a little. I heard a little from him.

4176. You know that Burroughs & Wellcome & Co. send out diaries ? —I get them.

D 4177. Did your father get them ?—He did.

4178. That is what I want to get. Did you ever see your father's diaries when you were with him ?—Not to my knowledge.

4179. How do you know he got these diaries then ?—I remember the tabloids in those diaries.

E 4180. You remember seeing the word "tabloid" in those diaries ?— Not in the diaries to my knowledge—in the actual specimens. We used often to take them down.

4181. I do not quite know what you mean by taking down the actual specimens ? —I mean undo the parcel and see what actually had F arrived.

4182. They are Burroughs, Wellcome & Co. ?—Yes, from Burroughs, Wellcome & Co.

4183. Then may I take it before you took your degree you had seen tabloids made by Burroughs, Wellcome & Co. ?—Yes, I had.

G 4184. Now I want you to tell my Lord when did you first see the word "tabloid" in connection with a compressed drug ?—At that time.

4185. Then may I take it that your first association with the word tabloid was a compressed drug put up by Messrs. Burroughs, Wellcome H & Co. ?—That is so.

4186. When did you get the idea that a tabloid meant an unmedicated vehicle ?—That came in the year 1897, before I started practice.

4187. I want to know what is the course of reasoning. How did you get from Messrs. Burroughs & Wellcome's tabloid—— ?—I did not get it I from Messrs. Burroughs & Wellcome—this later idea I did not get from Messrs. Burroughs & Wellcome.

4188. I wanted to trace the course of reasoning. How did you get the idea of an unmedicated vehicle ?—The term was, in my mind, a distinctive term, and in 1897, when I came across the things I am now using

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as tabloids, I recognised them as tabloids and called them so, without ever tracing the connection or attempting to trace the connection with Messrs. Burroughs & Wellcome.

4189. May I take it that you had used the word in that connection without thinking that it would only fit your tabloid ?—It was a general term when tabloids came in. I am sorry I do not see the point. A

4190. I think you told me that you saw tabloids first in connection with Messrs. Burroughs, Wellcome & Co. ?—Yes, I did.

4191. When did you first see the word "tabloid" used in connection with any other goods ?—I believe when I printed my own labels. B

4192. Do you manufacture these yourself ?—No, I have done so, but I do not manufacture those.

4193. Where do you get these made then ?—I get those in quantities in tins either from Messrs. Thompson & Capper or any firm of homœopathic chemists in Liverpool. C

4194. When you ordered them from Thompson & Capper did you order them as tabloids ?—Always unmedicated tabloids.

4195. Mr. Justice BYRNE : That is only since 1897, of course ?—That is since 1897.

4196. Mr. LEVETT : Were those written orders or verbal orders ? D —They were often telephone orders, but mostly verbal orders, I think, over the counter.

4197. Did they ever tell you that when they got orders for tabloids, they always thought they ought to supply Burroughs & Wellcome's goods ?—Seeing they referred to the unmedicated I do not think E they could very well do so.

4198. Whether they did or did not, did they or did they not ?—No, they did not.

Mr. WALTER : This is Liverpool, not Manchester.

Mr. LEVETT : Are you going to call the Liverpool manager ? F

Mr. WALTER : No.

4199. Mr. LEVETT : Then I will go on. My friend, Mr. Walter, is no doubt right, these orders were given at Liverpool ?—I believe they were.

4200. You say you believe ; you must know ?—I am sorry if I used the G word "believe." I do know by telephoning to the shop.

4201. I think there is a telephone between Liverpool and Manchester ? —Yes, but I do not use the trunk line more than I can help.

4202. When you telephoned, what was the message you sent. How did you describe what you wanted ?—I should ask for a pound tin of H unmedicated tabloids to be sent up.

4203. Then I may take it that you did not associate the word "tabloid" with a medicated drug at all ; it was an unmedicated tabloid ? —I know, as a matter of fact, that hundreds are put up in a medicated form, but those are the ones I principally used. I

4204. What are those made of which I have here ?—Sugar and milk.

4205. Did you ask for any particular form of tabloid ?—No, beyond the unmedicated.

4206. Here is a little label. Did you have that printed, or did Thompson & Capper have it printed ?—I had this printed.

4207. Did you have small glass bottles to put the things in, or how did you send them out ?—I sent them out in 2-drachm vials—small glass bottles.

4208. You told my Lord or my friend that these were like a table. Take one in your hand——

Mr. Justice BYRNE : I do not think he said that. He said he understands a tabloid is something in the shape of or resembling a flat round table. He did not say he considered those were like a flat round table.

The WITNESS : Those are what I termed the tabloids, if I have described it wrong. Those are the very things.

4209. Mr. Justice BYRNE : Those are what you mean ?—Those are what I mean.

4210. You think the curvature is so small that you think it is flat ?—I disregard the curvature. I think it is comparatively a flat surface.

4211. I suppose you might describe that as a lenticular form very much flattened ?—Yes.

4212. " Lenticular " is quite familiar to you ?—It is.

4213. Is " lentoid " familiar ?—No, it is not.

Mr. LEVETT : I have the words " round flat table."

Mr. Justice BYRNE : Yes, flat and round, a shape resembling a table.

4214. Mr. LEVETT : Did you ever come across a table which was convex at the top and convex at the bottom ?—No. As I have already said, I disregard this convexity, or rather, if I said in talking of a table perfectly flat, a curvature such as this I disregard.

4215. Then may I take it that as far as tabloid is concerned, you do not rely upon convexity as being important ?—I do not.

Re-examined by Mr. WALTER.

4216. When you first heard of the term " tabloid," can you tell my Lord whether you knew it as a proprietary name or a descriptive name ?—I saw it first in connection with Burroughs, Wellcome & Co.

4217. When first did you learn that it was a proprietory article—I think you told us 18 months ago ?—Yes, roughly speaking.

4218. Mr. Justice BYRNE : Have you got one of Burroughs, Wellcome & Co.'s there. They are considerably more convex that what you have shown me ?—Yes, the original ones were.

4219. Mr. WALTER : Will your Lordship allow me to ask a question on that. Do Messrs. Burroughs, Wellcome & Co. sell perfectly flat articles as tabloids ?—I believe they do.

4220. I do not know whether you have seen their lithia tabloids ?—No, I have not seen the lithia.

4221. Mr. Justice BYRNE: You know the word " lenticular." " Lenticular " would be a very good description of the shape of those Burroughs, Wellcome & Co.'s convex goods, would it not ? The one you

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have before you would be better described as a lenticular form very much flattened, would it not ?—Yes.

4222. Would that be a fair description ?—I am not sure. I know the word "lenticular," but I would not like to give a definition of it.

4223. The first definition of it is: "Having the form of a lense, resembling a lense or lentil in form; double convex." I find the word "lintoid," which seems to be a modern one—1877 was the first quotation: "Having the form of a lentil or lense shape"?—I have not heard that word before.

Mr. Justice BYRNE: That seems to be a modern word.

Mr. LEVETT: Of course, we have several kind of lenses.

Mr. Justice BYRNE: No one would say a convex would be meant by "lenticular," because it is bean-shaped, double convex being the first meaning. Double convex is the primary meaning.

Mr. LEVETT: You can have a lense double convex. There are four different kinds of lenses.

Mr. WALTER: Every lense is lenticular, whether it is concave or convex.

Mr. Justice BYRNE: Yes, but the primary meaning of the word is generally double convex.

Mr. WALTER: I am obliged to your Lordship for "lentoid."

Mr. Justice BYRNE: Lentoid is quite a modern word, invented in 1879, in Webster's then supplement. There are words—at least, I know of some words—with the suffix "oid," or ending in "oid," which have nothing to do with form. For instance, take a very common word, "aneroid"; form has nothing to do with it.

Mr. WALTER: I am not at all clear about that, my Lord.

Mr. Justice BYRNE: I have authority here.

Dr. W. C. Reed.

Dr. WILLIAM CASH REED, sworn.

Examined by Mr. WALTER.

4224. I think you are a Doctor of Medicine and a Master of Surgery of Edinburgh University, and you have been in practice for about 25 years?—Yes.

4225. And you practise at 15, Princes Avenue, Liverpool?—Yes.

4226. Have you known the word "tabloid"?—Yes.

4227. For how long?—I have known it for many years.

4228. With what meaning have you understood the word "tabloid"?—I have understood it to imply a compressed drug of a certain shape and form.

4229. When you first became acquainted with the word did you associate it with the firm of Messrs. Burroughs, Wellcome & Co., or at a later date?—At a later date.

4230. How was that?—It gradually dawned upon me, probably in connection with the circular, that Messrs. Burroughs, Wellcome & Co. sent out with their list which they send to all practitioners.

4231. So far as you know you first observed in those lists that they made a claim to it ?—Yes.

4232. In prescribing have you used the word "tabloid" ?—Frequently.

A 4233. Using the term "tabloid" alone, have you intended the goods of any particular firm to be supplied ?—No.

4234. If you required the goods of Messrs. Burroughs, Wellcome & Co., in what manner did you indicate it ?—I always put "B. W. & Co." after the name of the drug.

B 4235. You come in contact, of course, with patients a good deal ?—Yes.

4236. How do you find the term used ?—I find the term understood as I understand it, and used as I use it.

4237. And that is ?—Not as distinguishing any particular makers,

C but a drug of a certain form, a certain size, and dry.

4238. As regards chemists and druggists, what has been your experience there of the use of the term ?—I think that they have used it in the same sense that I have—indiscriminately.

Cross-examined by Mr. NEVILLE.

D 4239. You told my friend you knew of tabloids as a compressed drug of a certain shape originally ?—Yes.

4240. That was your first acquaintance with it ?—Yes.

4241. In what manner did you become acquainted with the compressed drug of a certain shape ?—I cannot say in what manner, except

E that it was presented to me in common with all practitioners, but we did not look into the source.

4242. Quite so, and presented to you as the make of Burroughs, Wellcome & Co. ?—As it turns out to be of the make of Burroughs, Wellcome & Co., but I did not enter into that question.

F 4243. I do not ask you to enter into any question, but simply to answer my questions. When you first came across tabloids did you know that they were made by Burroughs, Wellcome & Co. ?—When I first came across them ?

4244. Yes ?—I think it is probable that I did.

G 4245. And you never got tabloids from any other maker ?—I never got them at all.

4246. You knew of them as Burroughs, Wellcome & Co.'s make, but you never got them ?—I never got them.

4247. Later on you discovered from their diaries, and the literature

H that they sent you, that at all events they claimed an exclusive right to the word ?—Yes.

4248. And you understood that they made a legal claim to that right ?—Yes.

4249. Did you ever hear of any other maker making "tabloids"

I except Burroughs, Wellcome & Co. ?—I do not know that I have heard them claim that, no.

4250. Then, so far as you knew—I will only put it in that way—

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W. C. Reed.

Burroughs, Wellcome & Co. were the only makers of tabloids. Is not that right?—I can hardly say that, because I have ordered things in tabloid form which are not their make and not on their list.

4251. I daresay that is so, but I am dealing with the evidence you gave to my Lord in the last few minutes. You knew Burroughs, Wellcome & Co. to be the makers of tabloids?—Yes. A

4252. You did not know of any other maker who did make tabloids?—I knew of many makers who made what I understood by "tabloids."

4253. Did you know of any other maker who made an article which they sold under the name of "tabloid"?—Except in this way, I did, because they dispensed my prescriptions which contained the word "tabloid." B

4254. Give me the name of any maker who, to your knowledge, made tabloids except Burroughs, Wellcome & Co.?—The chemist at Plymouth, where I was in practice before I went to Liverpool, used to make tabloids of saccharated carbonate of iron. They are not on Burroughs & Wellcome's list. C

4255. What is his name?—Foster.

4256. Can you produce his list?—I do not know that he issued a list. D

4257. I think you are not answering me quite fairly. I am quite alive to the fact that you have obtained articles under the name of tabloid which you say were not Burroughs, Wellcome & Co.'s make. I am coming to that directly. I fully appreciate that you say that, but what I am on is something totally different, and that is, your knowledge at the time you used tabloid to describe the make of other makers. You knew that Burroughs, Wellcome & Co. made them?—Oh, yes. E

4258. You had never seen, in any price list or anywhere else, any tabloids or goods sold under the name of "tabloids" except Burroughs, Wellcome & Co.'s. That is right, is not it?—I think it is. F

4259. Now we have got back to where we were five minutes ago. You knew later on that they claimed the legal right to the exclusive use of the term "tabloid"?—Yes.

4260. You had never heard that right disputed; that is right, is not it?—Yes. G

4261. Yet you persistently used "tabloid" for the purpose of describing the goods you tell us, of other makers?—Excuse me, I did not persistently use it. When I knew that I did not do so any more and have not done so since.

4262. Well, Dr. Reed, I expected when you went into the box that you would say that, but I misunderstood you. Then the moment you heard, or had reason to suppose, that they claimed an exclusive use, you, very properly, never used "tabloid" again, except in connection with their goods?—That is correct. H

Mr. Justice BYRNE: But there was a period—as I understand, prior to that, during which Dr. Reed used the word "tabloid," meaning thereby goods other than the goods of B., W. & Co.? I

The WITNESS: Yes, my Lord.

4263. Mr. NEVILLE: Knowing at that time that Burroughs & Wellcome were makers of tabloids?—Yes.

4264. But not appreciating that they claimed to be the sole makers?—That is how, quite.

A 4265. As soon as you found it out you dropped the use of the word tabloid except when you meant their goods?—During the last 12 or 18 months, not longer.

4266. The moment you found they claimed an exclusive right?—Of course.

B 4267. Would you give me the name of the man who made the tabloids again?—The name is Foster, of Plymouth. I was in practice at Plymouth before I went to Liverpool.

4268. How long have you been at Liverpool?—Three and a half years.

C 4269. And the name of the man was Foster. Where was his place of business?—In Plymouth. I suppose I am bound to answer this.

4270. I think so, unless my Lord stops me. He was in Plymouth was he?—Yes.

4271. Can you give me his address?—It is a well-known chemist's—
D Bank of England Place, the address is.

4272. That will be quite sufficient. Your first acquaintance with tabloid as you have told us was with tabloids made by Burroughs, Wellcome & Co.?—Yes.

4273. And your idea of tabloids comes from the character of the
E goods which you so became acquaintance with, does it?—Presumably.

Re-examined by Mr. WALTER.

4274. What was the nature of the communication from Messrs. Burroughs & Wellcome which induced you to abandon the use of the term tabloid?—That green slip in their lists which they send out to all practi-
F tioners.

4275. That green slip alleged that they had legal rights?—Yes.

4276. That was about 18 months ago?—Not longer.

4277. For how many years previously had you used tabloid in the sense of which you have told us?—As far as I know ever since I have
G been in practice, which is 25 years, or, at any rate, since it became a word common to all practitioners.

4278. Can you tell us when you first heard of the word—do you remember?—I have no idea, it has gradually dawned upon me and I cannot tell in the least when I first heard the word.

H 4279. But it is a very long time?—Yes, it is a very long time.

4280. And so far as your experience goes, first amongst your professional friends, what has been its use during that time?—Its use?

4281. Yes?—It and "tablet" have been interchangeable terms, and it has not been used to designate by any of my professional friends, as far
I as I know, any preparation of Burroughs & Wellcome.

4282. Now, as regards the other section of the public that you come in contact with, namely, patients, what has been your experience of its

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use there ?—They use the term interchangeably and do not commit themselves to any special make—that I am absolutely positive of.

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Mr. HARRY WILLIAM KILBY PEARS, sworn.

Examined by Mr. WALTER.

4283. I think you are a manufacturing chemist carrying on business at Hove ?—That is correct.

4284. I believe you largely advertise to the public in various publications your medical preparations ?—That is right.

4285. Under what term do you advertise them ?—Tablets of compressed drugs.

4286. Have you been through the orders received by you for your goods during the last three years ?—Two of my clerks have. I have been through what they have selected.

4287. Are *those* some 400 orders for your goods under the term "tabloid." (Handed.) ?—Yes, that is so. But these are only a small proportion of what I could have produced if it had been necessary, but these were considered ample for the purpose.

4288. There are many more. Are all your preparations advertised as "tablets" ?—Yes. The name is given most distinctly to them, both in the advertisements and on the bottles.

Mr. Justice BYRNE : Can you give us the earliest date ?

Mr. WALTER : Those are the last three years only.

4289. Mr. Justice BYRNE : Oh dear no, 1893 is the first that catches my eye ?—The solicitors for the Defendants requested me to look up some of the earliest and some of the latest, and subsequently we had numerous others.

4290. You have looked up some of the earliest and some of the latest ? Some of the earliest and a few of the latest.

4291. 1893 seems to be the first I see here ?—Yes.

4292. These date from 1893 up to 1903 ?—Yes.

4293. But you do not say that there are all those which came in between, I understand ?——

4294. Mr. WALTER : You looked up some of the earliest and some of the latest ?—Yes, I have looked haphazard through the others.

4295. One or two questions about those. First of all, do you receive orders from all parts of Great Britain ?—Yes, and the Colonies.

4296. And from the Colonies and India ?—Yes, and from abroad.

4297. Do many of the orders refer to the magazine in which you advertise ?—A great many examples amongst those actually give the periodical in which they have seen the advertisements.

4298. Mr. Justice BYRNE : Here is one order I see which encloses what is evidently part of an advertisement of yours ?—Yes, that is so.

4299. That shows the form in which they are done up ?—Yes, my Lord.

Mr. LEVETT : May I look at those orders, my Lord. (The orders were handed to the learned Counsel.)

(The bundle of orders was put in and marked H.W.K.P. 1.)

4300. Mr. WALTER : Do you buy glass bottles ?—Very largely.

4301. I see a list here of glass bottles dated 1902 addressed to "Messrs. Kilby, Pears & Sons, Brighton," from Kilner Brothers, Limited, King's Cross, London ?—That is a list which I brought up with me from Brighton this morning. I did not know what importance attached to the list, which was an old one, yesterday, so I looked out the only one I could find, and there I find "Tabloid bottles" are listed. That is only a year ago.

(The list was put in and marked H.W.K.P. 2.)

4302. On the 12th of this month did you receive from Jules, Lang & Co. a letter asking you to allow them to quote for tabloid bottles—it is dated 12/11/03 ?—This letter is one similar to many that I receive. Makers of glass bottles, seeing that I probably use small glass bottles largely, write and volunteer quotations—asking to be allowed to supply me. This letter was received under those conditions. I have never written to those people, they merely write and volunteer to supply me with tabloid bottles.

(The letter was put in and marked H.W.K.P. 3.)

Cross-examined by Mr. NEVILLE.

4303. You are, as I understand, a manufacturer ?—Yes, an actual manufacturer of compressed drugs.

4304. Do you trade alone ?—Yes, alone.

4305. You have no partner ?—No partner whatever.

4306. Do you trade under your own name—Pears ?—My retail business I carry on under the name of "Kilby, Pears, & Sons." That is because my father was a retail chemist.

4307. I have no objection to your trading under Kilby, Pears, & Sons ?—I also have a wholesale business which I carry on under the name of the Standard Tablet Company in which I supply chemists with compressed drugs in bottles bearing their own name and address. There is probably as you know a great demand for tablets in the compressed form.

4308. It is the Tablet Standard Company ?—No, the Standard Tablet Company.

4309. That is the name under which you manufacture ?—Yes.

4310. You advertise to the public as well as to the trade, do not you ?—Yes, that is so.

4311. And you advertise very widely ?—Yes.

4312. Do you advertise in a popular form ?—Yes.

4313. You, of course, never use the word "tabloid" in connection with any goods you either make or sell unless they are Burroughs & Wellcome's ?—You see I am not asked for Burroughs & Wellcome's tabloids ever, because I have no retail establishment.

4314. Just give a simple answer to a simple question.—I am trying to do so.

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4315. Do you ever sell any articles other than Burroughs & Wellcome's under the name of tabloid?—Certainly not, unless I have reason to believe, and here in every one of these instances there is the most emphatic reason to believe, they mean my preparations—in nearly all those cases they say "your tabloids." A

4316. I am not asking you about that?—I must make my meaning clear. I cannot give half an answer to your question. I must make myself understood.

4317. Are you ready to go on?—Yes, quite.

4318. Do you ever sell under the name "tabloid"—I am not now asking you about orders for tablets——?—I am not responsible for what the public do. I make it clear that I sell tablets of compressed drugs in all my advertisements. B

4319. Mr. Justice BYRNE: What Counsel means is very simple. He is not imputing anything to you which is wrong, at any rate, at present, with reference to these orders. What he wants to know is, you never advertise or put forth your goods as tabloids?—No. C

4320. Mr. NEVILLE: Do not you know, and have not you known ever since you have been in the trade, that tabloid was the trade mark of Burroughs & Wellcome?—I knew that they claimed it. Personally I have never admitted their claim. D

4321. You have never admitted it?—No, not as far as my own opinion has gone: but I have never wished to incur the expense of disputing it.

4322. That is of immense value to yourself, but it does not so much concern us. I am not asking you about your opinion. You have never taken any steps to dispute their claim?—You asked whether I knew it was their trade mark. E

4323. Answer the question. Did you take any active steps to dispute the claim of Burroughs & Wellcome?—Certainly not, because it was not worth my while to incur the expense. F

4324. Did you ever communicate to them that you did not admit their claim to use the word tabloid?—Certainly not. I do not want to trade on their reputation, and I do not want to secure their customers. G

4325. Did you ever recognise in any way their "tabloid" as a trade name?—Yes, certainly.

4326. Publicly?—No. What necessity was there for me to recognise it publicly?

4327. Did you ever recognise their claim to the word "tabloid" publicly?—What necessity was there? People do such things under compulsion. H

4328. Are you capable of answering questions?—I am going to make myself clear.

Mr. Justice BYRNE: It is a very simple question and a very proper question. I will look after you. If they are capable of being answered, yes or no, you must answer them. I

The WITNESS: No, I do not make any public declaration.

Mr. Justice BYRNE: Stop. You are in too great a hurry to answer.

I was going to tell you that you shall have ample opportunity of explaining any answers; but if the question is capable of being answered yes or no it saves so much time to do that and then to say, "I must explain."

A The WITNESS: Very well, my Lord.

4329. Mr. NEVILLE: Have you ever publicly recognised "tabloid" as Burroughs & Wellcome's word?—May I ask you what you mean by "publicly"? Do you mean by correspondence?

4330. Either by literature or advertisement or anything of that kind?

B —No. I have never made the acknowledgement in an advertisement.

4331. Have you ever recognised "tabloid" as the trade mark of another firm?—I know that Burroughs & Wellcome claim it as theirs.

4332. I am asking you now about public recognition in advertisement or anything of that kind. Have you ever publicly recognised

C "tabloid" as the trade name and the trade mark of another manufacturer?—I really do not understand what you mean by that. I do not clearly understand what you mean by "publicly recognised."

4333. We will cut it short. Will you look at that and tell me whether that is one of your advertisements? (Handing a paper to the Witness.)

D —I expect I brought it up to draw attention to that myself this morning.

4334. If you would be a little less talkative and a little ~~less~~ more inclined to answer we should be able to get on better. Will you look at that and tell me if that is one of your advertisements?—That is so.

E (Exhibit put in and marked H.W.K.P. 4)

4335. I take it from the association of the word there that you put that forward as one of the best known and best trade marks in the trade?—No, I had not studied exactly then the capability of registration of that.

4336. I am not suggesting that you gave a legal opinion upon it, but,

F according to your then knowledge, you considered "tabloid" one of the best and best known trade marks in the trade?—Yes—merely as an example.

4337. As an example—a brilliant example of what might be done in the way of trade marks and trade names?—No, please do not impute that

G opinion to me.

4338. You wanted it imitated for your own benefit, did not you?—Do you want to know what my object was in putting that?

4338A. You have told us?—No, excuse me; you are putting opinions into my mouth. You gave that as an illustration of what could be done

H in trade mark; I do not express that opinion at all.

4339. "Particulars of prize scheme"—just listen to this: "The competition is open to chemists and their assistants, and the prizes will be awarded to those who send in the best suggestions on the following points." Then: "Point 8. Suggestions for a coined name capable of

I registration. The words 'tabloid,' 'varalette,' 'lentiform,' 'pearloid,' are good examples?—Yes, but I did not say that those were capable of registration, I say they are good examples of the words I want—the style of words I want. I do not say those are capable of registration.

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4340. I will ask you to bear in mind the responsibility of your position ?—Yes, I do, most emphatically.

4341. Then answer me the question. At the time when that advertisement was issued, did you think "tabloid" a coined word ?—I thought it a descriptive word, and for that reason I did not think Burroughs & Wellcome would be able to sustain their right were it disputed. A

4342. On your oath, when you issued this advertisement did you think "tabloid" a coined word? On your oath—now come ?—One moment, please. Do not confuse me by hurrying me. I have to think. B

4343. Mr. Justice BYRNE : Take your time. Have the thing before you, and see what it is before you answer the question ?—On my oath, I believed that this word was a descriptive word——

4344. That is not what you are asked. Just answer the question ; it is a very simple question. Read it over and take all your time. The simple question was : Did you believe when you issued that advertisement that the word "tabloid" was a coined word ?—Yes, I thought it was a coined word. C

4345. Now you may, if you want to do so, make some explanation ; I shall not object ?—By a coined word, I did not necessarily mean one that would in a Court of law as to whether it was capable of registration. D

4346. Mr. NEVILLE : Did you think it a good example of a coined name capable of registration ?—You see, I wanted to show the class of word that I wanted. To my mind, "soloid" is capable of registration, but not "tabloid." E

4347. Did you think it at the time of that advertisement ?—Yes, I did.

4348. A good example of a coined name capable of registration ?— No, I did not think that "tabloid" was a good name capable of registration. F

4349. Now, Mr. Pears ?—I did not want a word like "tabloid." I wanted a word capable of registration as short as the word "tabloid," as concise and as descriptive of the nature of the article. G

4350. Will you look at your advertisement—"Suggestions for a coined name capable of registration. The words 'tabloid,' &c., are good examples"—examples of what ?—"Capable of registration" comes after "suggestions." I wanted suggestions capable of registration. I do not say any of those words are capable of registration. H

4351. What were you offering the prize for ? This was a prize scheme, and I suppose you were to get something that was to be of value to yourself too, were you not ?—And of value to the customer too.

4352. No doubt, but primarily of value to the man who was giving the prize, which the customer was not. Did you not want anything of value to yourself ?—Yes, naturally no one is in business for the love of the thing. I

4353. Did you not want a coined word capable of registration ?— Yes, I did.

4354. And you thought "tabloid" was a good example of such a thing?—No, I keep on saying I did not.

4355. Very well; I take your answer. Of course, assuming this word to be capable of registration and maintenance on the register and to A be a good trade name, it is of enormous value, is it not?—Yes, certainly it is.

4356. And it would be of enormous value to others if they could take advantage of the advertisements of "tabloid" and supply tabloids of their own make?—Not at all. I disagree with you.

B 4357. Just consider that question before you answer?—No. I have quite made up my mind.

4358. You refuse to consider it?—No, I do not refuse.

4359. I will pass on to something else?—Excuse me, I did not say I refuse to consider it. I say I have considered it, and I know it will not C be of any value to any one, and for that reason no one has disputed the right of Burroughs & Wellcome to "tabloid," because when it becomes common property it is of use to no one.

4360. You wanted a word like that for your purpose?— If it was capable of registration.

D 4361. You wanted a word like that for your purpose?—Not like it. It was an example of the type of word that I wanted.

4362. You know that at the present time no manufacturer and no respectable chemist sells anything but Burroughs & Wellcome's goods under the name of "tabloid," do you not?—Not if Burroughs & Well- E come's tabloids are ordered.

4363. You know that no respectable manufacturer and no respectable chemist sells any goods under the name "tabloids" except the Plaintiffs, do you not?—I repeat, not if Burroughs & Wellcome's tabloids are ordered; but there is a great confusion in the mind of the public and F in the professional mind with regard to the use of the word.

4364. You know that the trade is perfectly alive to the fact that "tabloid" represents the make of Burroughs & Wellcome, do you not?—Because they have taken great care they they should know; but they have not taken such care to make the public know.

G 4365. They have taken immense care that they should know?—Immense care I agree with you; but they have not let the public know.

4366. Will you be so good as to answer my questions?—Yes.

4367. You know that no respectable manufacturer and no respectable H chemist will sell goods other than Burroughs & Wellcome's under the name "tabloid," do you not?—I can only repeat my former answer to that.

4368. No, indeed; you can answer that yes or no.—I can only say: When Burroughs & Wellcome's tabloids are ordered the chemists I supply them.

4369. You really must not play with me.—I am not playing with you; I am only giving——

4370. Answer the question, sir. Do you not know, upon your oath, that there is no respectable manufacturer and no respectable chemist in

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the country who will sell goods other than Burroughs & Wellcome's—— ? —I can only——

4371. Will you wait until I finish the question ?—Yes.

4372. Who will send any goods not Burroughs & Wellcome's under an order for tabloids ?—No, certainly not. I will not say that. A

4373. You will not say that ?—Certainly not. I do it myself when my preparations are obviously required.

4374. I say sell under the name "tabloid"—I have explained about that to you before ?—What is that but selling under the name "tabloids" ? B

4375. I do not want to have to go back ?—No, I do not waut to give what is not an answer.

4376. You are a respectable manufacturer, I take it ?—Yes.

4377. Very well ; you have never sold any goods of your make under the name "tabloid," have you ?—Not labelled as such. C

4378. I am going to ask you about that presently—I know that you have fulfilled orders for "tabloid." I am asking you a different question. I am asking you whether you have ever tried——

Mr. Justice BYRNE : Do you mind putting it so as to make it quite clear—apart from orders given such as those produced. D

4379. Mr. NEVILLE : I am much obliged to my Lord, and I will put it in this way, and then I shall see exactly what you do mean : Apart from orders which you say come to you and which you know do not refer to the manufacture of Burroughs & Wellcome, have you ever sold goods under the name of "tabloids" ?—No. E

4380. Would any respectable manufacturer do it ?—No.

4381. Apart from similar cases of mistake, would any respectable chemist do it ?—No, I do not think they would.

4382. Then we can leave that. If that is so, would it not be of very great value to any manufacturer or any chemist who could sell goods F under the name of "Tabloids," to do so ? No, I do not think so, because it would be of no value to anyone.

4383. Is not the reputation of Burroughs & Wellcome a very wide one ?—Yes, it is.

4384. Their goods have been enormously advertised, have they not ?— G They have been very largely advertised to the profession, but not to the public.

4385. Well ?—It makes all the difference in the world.

4386. The profession and the trade are the people who buy from Burroughs & Wellcome ?—It makes all the difference in the world H whether they advertise to the public or to the profession.

4387. The profession buy from Burroughs & Wellcome do they not ? —Yes, they do.

4388. Would it be an advantage to a manufacturer if he could sell to the trade and to the profession tabloids ?—I do not think it would. I

4389. Notwithstanding the reputation of "tabloid" in the market, and notwithstanding the amount of advertisement that Burroughs & Wellcome have given ?—No, because if the profession wanted Burroughs

& Wellcome's they would make it quite clear in their orders that they wanted Burroughs & Wellcome's and no others.

4390. Then you think it is a matter of perfect indifference, do you, whether Burroughs & Wellcome retain the exclusive right to the word "tabloid," or whether they do not?—No, I do not. I can quite put myself in Mr. Burroughs's position, and know that if I had spent so much money on a trade mark it would not be a matter of great indifference; it would be a matter of vital importance to me.

4391. It is bad for him, but good for no one else: one of those curious cases?—It is not a curious case at all; it is quite compatible with reason.

4392. You think any dread of that kind of thing may be bad for the manufacturers with the trade name and not good for anybody else?—I do not think Messrs. Burroughs & Wellcome would suffer largely from it.

4393. Not at all?—To a very slight extent.

4394. You knew full well that "tabloid" was the trade name and trade mark of Burroughs & Wellcome, did you not?—I knew that they claimed it as a trade mark.

4395. We have got your advertisement. You knew what you have told us about the position of "tabloid," in connection with Burroughs & Wellcome; and you say you have got a number of orders for tabloids of your make?—Yes.

4396. Since 1893 you have produced, how many do you say—400?—About 400.

4397. You have been through all the years from 1893 on to find it?—No, I do not say that.

4398. Let us see what you did say. You searched the early years, you searched the late years, and you searched indiscriminately in the middle?—I took parcels haphazard—not indiscriminately.

4399. Haphazard in the middle; I beg your pardon about "indiscriminately," it was "haphazard." I tried to repeat what you said, but no doubt it has the same meaning. You produce these 400?—Yes.

4400. You suggest if you look further you could find more?—A great many more.

4401. In all those cases they were orders for your goods?—Yes.

4402. Under the name of "tabloid"?—Under the name of "tabloid."

4403. You never invoiced them as "tabloid"?—No.

4404. You knew that it was a mistake on the part of the people who ordered?—No, I knew it was a confusion. The public when they want anything in a compressed form are quite indifferent whether they use the word "tabloid" or "tablet.

4405. You knew it was a mistake on the part of the persons who gave the orders?—No, it was not a mistake. They thought that all tablets manufactured by compression were tabloids. There is no mistake about it.

4406. No mistake about it at all?—No.

4407. You knew what they did not; you knew it was a mistake,

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whether they knew it or not ?—I knew that. The public were not under a misapprehension.

4408. You knew nobody could sell "tabloids" but Burroughs & Wellcome ?—I knew that when they got the goods I sent them they got what they wanted.

4409. Will you answer my question ? You knew that nobody could sell tabloids but Burroughs & Wellcome—legally ?—I know that they say that.

4410. You knew that they said that ?—I knew that they said that.

4411. Did you ever intimate to any of your customers that you did not make tabloids, and that what you made were tablets ?—Yes, when it was not clear that they meant Burroughs & Wellcome's.

4412. Mr. Justice BYRNE : You do not mean that quite, do you ? —Well, no, my Lord. When it was not quite clear which they meant.

4413. You mean whether yours or not ?—Yes, my Lord. May I give your Lordship an example ? On my advertisements you will see cascara tablets advertised. People frequently would not say your cascara tablets ; they would say, perhaps, for instance, in conjunction with one of those orders, with regard to which there is no doubt : " Send me a bottle of your pneuradion tabloids, and also a bottle of cascara tabloids." In that case I give all my clerks strict orders that such orders are to be brought under my notice, and a letter is sent to the customer explaining that another firm hold the word as their trade mark, but as it was obvious that they meant goods of my manufacture, I should send them my goods in execution of the order.

4414. Mr. NEVILLE : That, you say, is in cases where there was a doubt ?—Yes, and that is merely to protect myself from any trap which may be set for me by Messrs. Burroughs, Wellcome & Co.

4415. You say that where there was a doubt you would send your own preparation with an explanation ; is that what it comes to ?—Yes, because they would not apply to me for Messrs. Burroughs & Wellcome's preparations.

4416. Now I want you to tell me this : You will make any brand will you not—of course I am not imputing any impropriety to you—but if a customer sent to you to make up any brand you would make it for him, would you not ?—You do not seem to understand what the nature of a manufacturing chemist's business is ; my goods are supplied without any brand at all. Sometimes chemists say : " Send me them unlabelled ; we will fix our own labels " ; and in that case I do not know what becomes of them ; but usually they are sent out with the label bearing the chemist's name and address.

4417. That is so, is it not, if they give you an order, and ask you to put their name on it, or put a particular brand on it, is it not ?—No, I have never been asked to put any particular brand on.

4418. The labels contain brands, do they not ?—No, they are plain printed—only the names of the drugs.

4419. And also the names of the people who are going to sell them, I suppose ?—Yes.

4420. That is in the case where you put the customer's label on the bottle at their request ?—Yes.

4421. Now, will you tell me this : If chemists had substituted articles so sent out by you for the goods of Messrs. Burroughs & Wellcome they would make an enormous profit, would they not ?—They would make a good profit.

4422. An enormous profit ?—No, I do not say an enormous profit—enormous is a relative term.

4423. Well, well ; but you agree that they would make a very much larger profit than they possibly could by simply selling Messrs. Burroughs & Wellcome's goods ?—Oh, yes, very likely.

4424. So that there is a considerable temptation to chemists to get goods unbranded with a view to substitution ?—No ; chemists as a body are very much averse to substitution, and they regard it as a matter of honour not to do it.

4425. But you agree that there would be a great temptation under such circumstances to substitute your goods which are cheap goods for Burroughs & Wellcome's goods, which are dearer goods ?—No, they would not substitute, but they would possibly use their personal influence, and say, for instance, referring to a particular preparation : "This is just as good as that," and that would be pefectly legitimate.

4426. I did not ask you whether they would succumb to the temptation, but I asked you whether it would not be in fact a very great temptation ?—No, not when you consider that it is part of a chemist's education not to substitute.

4428. What kind of profit do you suggest is made by chemists on the sale of your goods ?—Well, you have an advertisement there, or I have one in my pocket, in which I show them that they can make 250 per cent. profit, but may I ask whether you consider that an exorbitant profit ?

4429. I am not expressing an opinion upon that ; all I put to you is that it is a very great deal more than they would get by selling Messrs. Burroughs & Wellcome's goods ?—Yes, it is more, and that is the reason why I advertise these goods without a brand ; chemists are sick to death of branded goods and prices are cut to nothing A man is in business, and he has a perfect right to get a living, and it is quite right to substitute goods——

4430. No, he may not substitute ?—No ; but he may use his personal influence to substitute goods of his own. That is what I meant.

Mr. NEVILLE : I will put in this advertisement of 1902.

(The same was put in and marked.)

4431. Have you ever supplied Messrs. Thompson & Capper with any of your drugs ?—Not to my knowledge ; in fact, I think I am correct in saying that their names do not appear on our books.

4432. You say their names do not appear on your books, but do you mean that ?—Yes, they have never had any transaction with me whatever.

4433. You mean as far as you know ?—They have not.

4434. That you are sure about ?—Yes, we have made a very careful search.

4435. Now with regard to these bottles ; what was the name of the

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firm who supplied that price list—was it Kilner Brothers, Limited?—Yes, Killner Brothers, Limited.

4436. Do you know that they have undertaken not to use the word any more?—No, I am unaware of that. I think it is quite natural, though, that they should give an undertaking. A

4437. You mean they ought to if they are honest men?—But it proves nothing.

4438. Ought they not, as honest men, to do so with the trade knowledge as to the meaning of the word "tabloid"?—I say that they could quite honestly—— B

4439. Will you answer my question?—I am answering it.

4440. Answer it "yes" or "no"—ought they, or ought they not, as honest men, to give such an undertaking?—It all depends on what their opinion is of the validity of Messrs. Burroughs, Wellcome's trade mark; let them keep it in if they think it is an invalid trade mark, and like to take C the consequences, and if they think it is worth their while to run the risk of contesting it, but it is not a question of honesty.

4441. You say it is not a question of honesty with the knowledge that the mark has been used for 18 years exclusively by Messrs. Burroughs & Wellcome?—No, length of time does not constitute validity in a trade D if it is an invalid one.

Re-examined by Mr. WALTER.

4442. Do you know of any chemist in the Kingdom who does not sell articles in bottles bearing only his own name and the name of the drug?—I think it would be a very rare thing to find any, and then it E would only be an old-fashioned, sleepy chemist who would not have them.

4443. Have you ever been in any chemist's shop in the kingdom where the chemist would not say, if you asked for a proprietary article, "I have something just as good"?—No; he would be no man of business F if he did not.

4444. Do the majority of chemists make up the special goods that they sell themselves, or are they made up for them?—They are made up for them.

4445. And are you a large supplier of chemist's proprietary articles? G —Yes, in the form of compressed tablets.

4446. Mr. Justice BYRNE: What kind of label is it that goes out, I do not quite understand. How are the labels branded. Have you got one?—I have not one here. They are similar to this one, only a different colour. They are printed in that style. (Referring to an exhibit.) It is H is a square label and it is a square bottle.

4447. This has your name at the top. You mean that would be the name of the other chemist?—Yes, my Lord. I am sorry I have not one with me. They vary, but they are only a little different; the name and address come at the bottom of the label instead of having them separated I as in this case.

4448. You do not have your name on them?– No, my Lord, my name does not appear.

4449. You leave out those words at the top, leave in this, and add the particular chemist's name ?—Yes, my Lord, here is one something like it. (Handing an exhibit to the learned Judge.)

Mr. Justice BYRNE : This had better be marked. This is a bottle with a label as the witness sends it out, I understand, for the chemist to sell ?

Mr. NEVILLE : I think that is one of ours, my Lord.

Mr. Justice BYRNE : I thought the Witness put it in ?

The WITNESS : No, my Lord, it came out of this box.

4450. Mr. WALTER : Is a gross profit of 200 per cent., or even 250 per cent., anything peculiar in a retail chemist's business on certain articles ?—No, certainly not. In this way—a chemist has an expensive education to go through and he has a stiff examination to pass.

4451. Mr. Justice BYRNE : You say there is a reason for it and that there is an excuse for the large profit. You do not say that there is not a large profit. We all know that we pay a great deal more than the value of the articles for the skill employed in compounding them. I do not think we need pursue this ?—Yes, my Lord, but there are a good many people here who are not chemists——

Mr. Justice BYRNE : Never mind them.

Mr. WALTER (to the Witness) : That will do, thank you.

The WITNESS : I have brought up some specimens.

4452. Mr. WALTER : Are those included in that bundle ?—Yes, they should be included. As regards the shape, I can make that quite clear if there is any doubt about it——

Mr. WALTER : No, never mind, we need not trouble about that.

Mr. MICHAEL CARTEIGHE, sworn.

Examined by Mr. WALTER.

4453. I think you carry on business as Dinneford & Company at 180, New Bond Street ?—Yes.

4454. You have had upwards of 40 years' experience ; you are an officer of the Pharmaceutical Council since 1866 for 14 years, and you were President from 1882 to 1883, and from 1895 to 1896 of the Pharmaceutical Society ?—That is so.

4455. You were an Examiner for many years and also a Fellow of the Institute of Chemistry ?—Yes.

4456. You have been well acquainted with the word "tabloid"—Yes.

4457. I take it you have also been well acquainted with the literature of Messrs. Burroughs, Wellcome & Co. ?—Yes, pretty well.

4458. I do not know whether you are also acquainted with Burroughs, Wellcome & Co.'s goods—" tablets " ?—No.

4459. You were not acquainted with those ?—I beg your pardon, Wyeth's. I was acquainted with Wyeth's. I think they were the first I saw, and, of course, I must have seen them when they were called tablets

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before the word "tabloid" was used. It is many years ago, and I have forgotten that.

4460. You come in contact a good deal with the public?—Yes.

4461. Will you tell us how you find the public use the term "tabloid"? — Practically, they use the term "tabloid" as synonymous with almost any flattish shape of compressed drug. During the last year they have been getting more educated, but still even at this moment they look upon it as an ordinary descriptive word and are quite indifferent from the point of view of understanding as between the word "tablet" and "tabloid."

4462. Another branch that you come into contact with are medical men. What is your experience with regard to medical men?—Very much the same. During the last year Messrs. Burroughs, Wellcome & Co. have distributed literature to the medical men and used various forms of advertisements calling attention to their trade mark; and they have, I think—perhaps learnt—the leading members of the profession in London —something about it, but in the rank and file of the medical profession they are practically still quite unable to really understand the difference between a "tablet" and a "tabloid"; they do not take the trouble, in fact.

4463. As regards another use of the term, do you find they distinguish between the term "tablet" and "tabloid"?—I took the trouble to abstract or have abstracted 1,000 prescriptions that we had dispensed —I am now speaking of dispensed prescriptions, not orders sold retail over the counter—and out of 100 there were 50 prescribed as tabloids with the initials B. W. & Co. (those initials are now used more than they were formerly); 48 were without any name at all, and in the other two, curiously enough, the word "Wyeth" was used.

4464. The word "Wyeth" was used for "tabloid"?—Yes, at the foot of two.

4465. Mr. Justice BYRNE: You abstracted 100?—From 1,000 prescriptions from this particular date.

4466. Mr. WALTER: Have you had cases where goods have been ordered from you where the goods were not listed by Burroughs, Wellcome & Co.?—Yes, certainly, from time to time.

4467. Goods of which you knew what was intended?—In some cases, yes; in others, no.

4468. What has been your practice in regard to that?—In all cases where the drug was a compounded drug we sent to Burroughs, Wellcome & Co. either for it or to have it prepared. If it was a simple drug, that is to say, chlorate of potash for example, or anything of that kind, the probability is that we should ourselves have made enough for the purpose. They are generally small orders. Of course chlorate of potash is illustrative; I only mention that as an illustration.

4469. You do not recollect a particular drug in which you have done it?—No.

4470. You know of course that they claim it as a registered trade mark?—Yes, I do.

4471. You personally as far as your business is concerned have always given effect to it ?—Certainly.

4472. The only occasion where you ever delivered goods not A Burroughs, Wellcome & Co.'s under an order for tabloids has been where they are not listed ?—Where they are not listed and where they are not compounded.

4473. And where they were simple ?—Yes, where one knows on the face of it what drug is required.

B 4474. And you have yourself prepared the drug and made it up ? —Yes.

4475. You say in your opinion the public practically use the word with any special compressed drug. There has been an enormous sale of Burroughs, Wellcome & Co 's tabloids for the last 18 years—increasingly C large of course ?—Yes.

4476. Taking it altogether an enormous sale ?—Yes, an enormous sale from the point of view of mixed sets of drugs. There are of course a great many other individual things that are sold more largely.

4477. So that the public for 18 years have been able to associate with D the word "tabloid" a compressed drug—of a small character and in a convenient form ?—Yes, they have been so able.

4478. That being so, they would be very likely to use the word "tabloid" in connection with a compressed drug ?—No doubt.

4479. Particularly if chemists have done their best to dissociate the E name of Burroughs, Wellcome & Co. from their goods. Do you follow what I mean ?—No, I did not quite catch that.

4480. Particularly if the dispensing chemist has done his best to dissociate the name of Burroughs, Wellcome & Co. from the name of the goods which he sold ?—I do not know of any retailer who sells tabloids F without Burroughs, Wellcome & Co.'s name that are not theirs. I say I do not know anyone.

4481. Not that are not theirs, but that are theirs ?—I believe Burroughs, Wellcome & Co. used to sell in bulk.

4482. I mean the public would be all the more likely to do that G where chemists so adopted the practice ?—You mean to say, dissociating the name they would learn "tabloid"?

4483 Dissociating the name and selling under their own name would lead to confusion in the mind of the public ?—Distinctly.

4484. You say nowadays the public are getting to know better that H "tabloid" refers to the make of a particular firm ?—I am not quite sure about the public yet. Of course, in time that would come. It is entirely a question of advertisement.

4485. I think you said, with reference to the public, that they are getting better educated ?—Yes.

I 4486. That means on this particular point ?—Literature is being sent out in their preparations telling the public what to ask for.

4487. So they are getting better educated on this particular point of

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the connection between " tabloid " and Burroughs, Wellcome & Co. That is what you mean ?—Precisely.

4488. And you say latterly the medical profession also ?—Yes, as far as my experience goes. That of course is limited to London.

4489. How far a member of one profession is competent to give an opinion as to the feelings of another I do not know ; but at all events you have told us what doctors think. You do not suggest that the medical men who have been called are all giving their evidence as the result of the literature they have received in the course of the last year or 18 months ?—I do not know who have been called ; I am absolutely ignorant about that. It may appear strange, but it is a fact that in my position I associate at dinner tables, clubs and elsewhere with medical men, and in their conversation with me they show that they do not know the difference.

4490. Then your view is that, if the heads of the profession know it at all, they only know it as the result of the literature of the last year or two. That is the opinion you would have formed ?—That is the opinion I should have formed. Some did many years ago, but the larger number not until lately.

4491. That is your view of it ?—It is.

Mr. A. L. Blaine

Mr. ALFRED LUCAS BLAIN, sworn.

Examined by Mr. WALTER.

4492. I think you are a pharmaceutical chemist carrying on business at 69, Market Street, Manchester ?—That is so.

4493. You have had 20 years' experience ?—Yes.

4494. I believe for the last 11 years you have been manager of the retail and dispensing departments of Messrs. Woolley, Sons & Co., Limited, of Manchester ?—That is right.

4495. I take it you have known of the term " tabloid " ?—Yes.

4496. And you have been acquainted with Messrs. Burroughs, Wellcome & Co.'s literature ?—Quite so.

4497. You have known of their claim to the use of the term "tabloid" as a trade mark ?—Yes.

4498. Do you yourself come in contact with the public?—Frequently.

4499. Will you tell us what is your experience of the meaning of the term " tabloid " as used by the public ?—They use the word to mean any compressed drug. I cannot say that they use it to mean any special make of drug.

4500. For instance, do you keep taka diastase ?—Yes.

4501. Have you ever been asked for taka diastase under that term ?—Under the term of " tabloid " ?

4502. Yes, tabloid ?—I have.

4503. I believe your firm, Messrs. Woolley, are manufacturing as well as retail chemists ?—That is so.

4504. Have any of those goods ever been ordered under the term "tabloid"?—The goods compressed by our firm?

4505. Yes?—They have.

4506. How do you know that the goods of your firm were intended?
A —Because they order in the wholesale way large quantities.

4507. Actually in the wholesale way they send in their orders to you under what term? What do they order them as?—They order large quantities of tabloids.

4508. Do you personally come in contact also with prescriptions?
B —I do.

4509. And with medical men?—With the prescriptions of medical men.

4510. Not with the medical men themselves?—No.

4511. Do you find the term "tabloid" used in respect only of goods
C of Messrs. Burroughs, Wellcome & Co. by medical men?—No, it is used indiscriminately.

4512. And what is your experience with regard to the putting of names after the word "tabloid?—I have four copies of prescriptions here that have just been taken haphazard. One of them bears the name of
D Oppenheimer with the word "tabloids" in brackets underneath.

4513. Yes, "Oppenheimer tabloids"?—I have one here describing, one bottle of tabloids Damancy & Co., of digestenzmes, that is the name of the drug.

4514. Of the firm?—No, Damancy. It is a Liverpool firm, I think.
E One bottle of tabloids of Damancy & Co., and he says in the directions "One tabloid with his meal."

4515. Yes?—I have one here, "iodothyrn tabloids, two or three twice a day." That is a Liverpool chemist. I think that is the property of a Liverpool firm.

F 4516. Have you copied those from your prescription book?—Yes, I have another one, and it is "purgan tabloid"—rather a new drug, a German preparation.

4516. That is a special German proprietary article?—Yes, he says "One tabloid at night as required." (Prescriptions handed to his Lord-
G ship.)

4517. Are those samples of many that you receive?—Those are samples of many, I may say.

4518. Where you do not know in a case of that kind, do you supply the goods that you know are intended?—We supply the goods issued by
H the name such as "Oppenheimer," or any other name on the prescription.

4519. You have in other cases written to Messrs. Burroughs & Wellcome?—When in doubt I write to Messrs. Burroughs & Wellcome.

4520. What does the patient do meanwhile?—The patient waits for return of post—two days.

I 4521. The patient waits for two days. Is that a convenient thing in a druggist's business?—Is it a customary thing?

Mr. NEVILLE: I do not see how he can answer that.

Mr. WALTER: Very well.

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Mr. A. L. Blaine.

Cross-examined by Mr. NEVILLE.

4522. Are you in a general way of business as a dispenser ?—Yes, we have rather a large dispensing business.

4523. How many prescriptions do you make up a day, averaging it out ?—Say 100.

4524. Will you let me look at those specimens you have. (Same handed.) These are specimen prescriptions.

Mr. Justice BYRNE : What is the date of that bundle you have, Mr. Walter.

Mr. WALTER : 1903.

4525. Mr. NEVILLE : You want me to add this ?—That is not a prescription ; it is a retail order.

4526. I think you told us that your business was mainly making up prescriptions ?—Yes, and retail trade.

4527. Perhaps I misunderstood you. But you do make up a very large number of prescriptions, as many as 100 a day, and you have a retail business to do. These are instances that you find in 1902 and 1903 ?—No, they are one or two that I took from the books haphazard.

4528. Why did you take these and neglect others ?—I looked through the books to get one or two samples.

4529. You bring these as instances of what happened in 1902 and 1903, but you cannot say that they were all ?—I am sure they are not all.

4530. These are what caught your eye ?—Yes, these I made a note of.

4531. Now, how did you come by this order of October 2nd, 1903 ?—That is an order from a customer you will notice.

4532. I do. This is an example of a different kind of thing ?—Oh, yes.

Mr. NEVILLE : Then this will go in with the others, Mr. Walter ?

Mr. WALTER : Yes.

(Put in and marked A.L.B. 1.)

4533. Mr. NEVILLE : With regard to the order as to the manufacturer, what have you to do with the manufacturing part of the business ?—I have nothing personally to do with it.

4534. I thought not—you are the dispenser ?—I am the manager.

4535. And the dispenser ?—No, I do not myself dispense.

4536. You are the manager of the shop ?—Manager of the dispensing and the retail departments.

4537. You have nothing to do with the wholesale ?—No, I am in touch with them.

4538. The orders do not go through your hands ?—No.

4539. Then the information you have given us with regard to orders is what somebody has told you ?—I have seen them.

4540. For the purposes of this case ?—No. I have seen them for years.

4541. What do you see them for. They do not pass through your

hands? There is always a doubt as to what is intended, and frequently they send them to me.

4542. When tabloids are ordered they send them to you to see what is to be done?—Yes. I am somewhat of an expert in that line.

A 4543. So that you may tell them whether they are justified in fulfilling the order or whether they are not?—As to whether they are made by Burroughs, Wellcome & Co.

4544. But if they were made by Burroughs, Wellcome & Co. you would not feel justified in supplying them with goods not made by
B Burroughs, Wellcome & Co.?—If they were made by Burroughs, Wellcome & Co.?

4545. If they were listed by Burroughs, Wellcome & Co. you would not feel justified in supplying them if they were not of their make?—No, not if they were not of their make.

C 4546. And it is only in cases where they are not listed that the difficulty arises?—That is so.

4547. Supposing a customer comes into your shop and asks for tabloids of any drug listed by Burroughs, Wellcome & Co., I suppose the assistants have general instructions with regard to their duties, have not
D they?—Oh, yes.

4548. Speaking, therefore, for yourself, and for what your assistants should do if they obeyed your instructions, what should you do in such a case?—We should supply Burroughs, Wellcome & Co.'s preparation.

4549. Without question?—Without question.

E 4550. And you only question the customer when he asks for something which is not listed by Burroughs, Wellcome & Co., or which Burroughs, Wellcome & Co. cannot make—is that right?—No, only where the drug which is required in a compressed form is made by some other firm, or is a combination which is made by ourselves and not by
F Burroughs, Wellcome & Co.

4551. In those cases you ask. You explain that tabloids of that particular drug or this particular drug, are not made, but that you make them?—Yes.

4552. What do you call yours?—We call them pellets.

G 4553. Have you got your label there?—Yes, that is the label.

4554. That is what you put on all your bottles, is it?—Similar.

4555. Of course they would be different drugs?—Yes.

4556. Mr. Justice BYRNE: That is an example?—Yes. I might mention, my Lord, that is a case in point. It is a combination of three
H drugs which are compressed by ourselves and not by Burroughs, Wellcome & Co.

4557. Mr. NEVILLE: Rhubarb, magnesia, and mint pellets, each containing two grains of rhubarb, two grains of carbonate of magnesia, and half a minim of oil of peppermint; and then the dose is
I given—"J. Woolley, Sons, & Company, Manchester" (Put in and marked A. L. B. 2.)?—Yes, that is a case where the enquiry is made under the name of "tabloid."

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Mr. A. L. Blaine.

Re-examined by Mr. WALTER.

4558. With regard to those bottles labelled "rhubarb pellets," how do the public ask for those goods?—They ask for them in various ways.

4559. Do they ever ask for those goods as tabloids?—I have mentioned that case as one I had in my mind. A

4560. That is one of the things that are asked for as tabloids?—It was in my mind as being asked for in that way.

4561. As to this other document which has been put in, you have got an order here from Mrs. Butler: "Kindly forward four bottles aspirin tabloids"?—Yes. B

4562. What did you forward under that order?—Aspirin tabloids.

4563. Where did you get those?—From Burroughs, Wellcome & Co.

4564. Then you got a letter back saying you had made a mistake, that the goods were the goods of Messrs. Bayer & Co.?—No.

4565. Tell us what the letter means?—The first letter, October 2nd, C says, "Please forward four bottle of aspirin tabloids 8 grains containing 100 in each bottle." I sent aspirin tabloids, but I could not send 8-grain one, because they were not made. I thought the person had made a mistake in the figure, as the laity do sometimes, and had mistaken 8 for 5, and I sent 5-grain tabloids. D

4566. Then you get the letter back complaining?—I got back a letter saying: "You have made a mistake. I particularly mentioned 8-grain tabloids, and you have sent me 5-grain tabloids. I have been getting the tabloids, 8-grain, from the Bayer Company."

4567. That is what I said, the Bayer Company. Did the Bayer Company sell tabloids?—Not under that name. E

Mr. T. F. Abrahams.

Mr. THOMAS FELL ABRAHAMS, sworn.

Examined by Mr. WALTER.

4568. You are the senior partner in the firm of Clay & Abrahams, pharmaceutical chemists, of Bold Street and Castle Street, Liverpool, and F you have been in business for 35 years?—Yes.

4569. I believe you are very well acquainted with the goods of Messrs. Burroughs, Wellcome & Co.?—Very well.

4570. And I believe you are large sellers of them?—Large sellers.

4571. And you do a large dispensing business, too?—Yes. G

4572. Did you make the acquaintance of the firm some 15 or 20 years ago, in relation to the term "tablets"?—Yes.

4573. You were selling goods at that time under the term "tablets," I think?—I could not say.

4574. Were proceedings threatened against you for infringement of H the trade mark "tablet"?—Yes.

4575. By Messrs. Burroughs, Wellcome & Co.?—Yes.

4576. And I think you told them to go on?—Yes. I said "tablet" was a word as much mine as theirs.

4577. And they did not go on ?—They did not go on.

4578. In the course of your business you come, of course, in contact a good deal with the public ?—Yes.

4579. Will you tell my Lord what, from your business relations with the public, the public understands by the term "tabloid"?—They use the term "tabloid" to mean a tablet, in the vast majority of cases.

4580. Now I believe your business also brings you into contact with a good many doctors ?—Yes.

4581. And I think you have looked up your prescription book, under the head of all doctors, and you have got a sample bundle here, every one of them from different doctors in Liverpool, and I think there are also two orders here which have just come in—one November and the other September of this year. Just look at those. I do not know how many there are of those copy prescriptions there ?—I did not look these up at all. My copying clerk picked these out while he was at his work He never was taken off his work to do it.

4582. Just tell us how many prescriptions there are there ?—Nine.

4583. From nine different doctors ?—Every one of them different.

4584. Are those all orders for tabloids ?—Yes.

4585. They are all orders for goods not Burroughs & Wellcome's ?—Every one of them—some American and some French.

4586. Mr. Justice BYRNE : Let me look at them. (The documents were handed to his Lordship.) Are these stamps on these copies the dates of the prescriptions ?—No, they are the dates on which the copies were made.

Mr. Justice BYRNE : Yes, I see.

The WITNESS : I think they are all one day.

4587. Mr. Justice BYRNE : They are all 1902 and 1903, are not they ?—Yes, I should think so. The clerk would not be using older books probably.

Mr. Justice BYRNE : Yes, that seems to be so. One of them is not a prescription.

Mr. WALTER : No, my Lord, there are two orders. There is one behind it too. Those just came in, one of them I think yesterday or the day before.

4588. Mr. Justice BYRNE : "Castor oil tabloids." That means something very different—"capsules," I suppose ?—Yes, it shows the absurd way in which the word is used. You could not have castor oil in a tabloid.

(Documents put in and marked T.F.A. 1.)

4589. Mr. WALTER : Have you had occasion to communicate with doctors when the word tabloid has been used ?—Very often.

4590. Now from your experience so gained of that branch of the profession how do you find doctors use the term "tabloid"?—They do not as a rule attach any special importance to the term, excepting as descriptive of a compressed drug in a particular shape, the particles of which are held together without an excipient as distinct from a pill. In a pill there is an excipient used, and the pill is round. In a tablet there is little or

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Mr. T. F. Abrahams.

no excipient, and the particles are attached together by powerful pressure. That is all they mean.

4591. In answer to particular inquries by you in reference to what they meant by the term is that the information which has been given to you ?—As far as I can remember, invariably. A

4592. You know, of course, of the use by Messrs. Burroughs & Wellcome and their claim to the trade mark ?—Oh, certainly.

4593. Now, where tabloid has been used have you asked customers whose goods they mean ?—Many times.

4594. And what information have you gleaned ?—As a rule they have B not the slightest idea—they want a tablet.

4595. Now as to the bottles which are used for these purposes, do travellers call on you for the purpose of obtaining orders for your goods ? —Yes.

4596. Bottles and so on ?—Well, the buying of bottles for many C years has been in the hands of my partner exclusively. I do not buy bottles, and I have not done so for years. That is entirely in my brother's department, but I see the lists occasionally. They come and I have a glance at them, but it is not in my special department.

4597. Have you noticed at any time how the bottles are described in D the list ?—Oh, yes, they describe them as "tabloid bottles."

Mr. NEVILLE : Let us have the list.

Mr. WALTER : We have seen three or four of them.

Mr. NEVILLE : This is not evidence I can admit in that form.

4598. Mr. WALTER : You do not happen to have one here ?—No, E we do not keep them. As soon as the new one comes the old one is burned. We could not keep them all.

4599. I think you told us you bought very large numbers of Burroughs & Wellcome's goods ?—Large numbers.

Cross-examined by Mr. NEVILLE. F

4600. Do you serve in the shop ?—Yes, not to a large extent though. I come when I am wanted.

4601. When your advice is wanted on a particular matter you are called in ?—Yes.

4602. You would not as a general rule attend behind the counter ?— G I come when there is any pressure. I am constantly there.

4603. On the premises ?—Backwards and forwards behind the counter and to the office. I am in constant touch with the customers.

4604. It is not part of your regular duty to attend to the customers that come into the shop. You have assistants for that ?—Yes, as a matter H of fact I only take orders when there is pressure.

4605. How many assistants have you in your shop ?—In the two shops we have 10 qualified chemists and druggists besides my brother and myself —11 at present besides my brother and myself and clerks.

4606. Do you superintend one shop and he the other ?—Yes. I

4607. There are 11 assistants divided between them. There are others who are not qualified chemists ?—Yes, and clerks.

4608. Clerks and 11 qualified assistants in the two shops ?—Yes.

4609. You tell us when Burroughs & Wellcomes sought to set up an exclusive right to the word tablet as far as you were concerned, you would not have it ?—Certainly not.

A 4610. You resisted ?—Certainly.

4611. How long ago was that ?—When I was first asked I thought it might have been 15 years ago, but I should think it is more.

4612. You think it is more ?—I should think it is nearer 20 than 15, but I really could not say,

B 4613. Do you recollect their bringing of the "tabloid" mark on to the market ?—Oh yes, I must.

4614. That was after your difference with them about the tabloid was not it ?—You could hardly call it a difference.

4615. I mean what occurred—there was no dispute about it ?—No,

C they abandoned it at once.

4616. You said you had as much right as they to it, and there was an end of it. They never sought to impose any liability on you ?—No, it was a mere trifle—our sale of tablets was trivial.

4617. I do not want to put it forward as a quarrel. I only want to

D get the date ?—Quite so.

4618. Shortly after that question, we will call it, about the tablets, do you recollect their introducing "tabloid" ?—Yes, I think so—oh, yes, certainly.

4619. We know it was about 18 years ago—"tabloid" was registered

E in 1884 ?—It may be. I could not say to a year or two.

4620. If your recollection is right, tablet was used a little before that. That would make it about right—about 20 years since you wrote to them about the tablets ?—Yes, I should think so.

4621. Have you ever objected to their claim to the exclusive use of

F the word tabloid ?— Never.

4622. And you have known that that has been their trade mark and trade name for a number of years past ?—I know they have claimed it, but if I am going over a crossing and a cab is coming along I know I have a right to the crossing, but I get out of the cab's way.

G 4623. But you never suggested to them that you did not recognise their right ?—I had something better to do.

4624. And you always have recognised their right, have you not ? You have never sold anything as a tabloid except the goods of Burroughs & Wellcome ?—No.

H 4625. For all these years ?—No.

4626. I mean knowingly you would not do it ?—Not knowingly—oh, no.

4627. And if the assistants in your shops obeyed your instructions they would not do it either ?—My assistants are instructed to find out

I what the customer wants. If the customer wants a tabloid they get it. If they do not want a tabloid they get a tablet.

4628. When were instructions given to your assistants to find out what the customers wanted—I want you to be careful about this ?—Many times.

4629. How many years ago ?—I could not say,

4630. Try to recollect ?—I could not possibly recollect. It would probably be given when the question first arose.

4631. When you first heard of a dispute about the exclusive right to the word, you gave instructions to your assistants to find out what the customers meant ?—No.

4632. Is that not right ?—Oh, dear no—long before that.

4633. How is it ? You told me that it was when the question first arose ?—Yes, but the question would arise naturally in this way. A doctor or a customer would order a tabloid, and when the case comes to be considered it is discovered that we have not such a tabloid; then we have to find out what the customer really means. The assistant would be instructed in all such cases to find out.

4634. That I cannot follow, do not misunderstand me. I will put it in another way and see whether I can understand exactly what you mean. Supposing that two or three years ago a customer had come into your shop and ordered tabloids of a drug listed by Burroughs & Wellcome, what would you have done ?—In all probability nothing in the world would be said, but if it happened that it was a drug which we ourselves put up (which is an extremely unlikely thing) we should say : " Do you want a tabloid or do you want a tablet."

4635. In all other cases you would supply Burroughs & Wellcome's without question in response to the order ?—Yes.

4636. Has that system ever been changed, or is that system existing in your shops to-day ?—At the present moment.

4637. Now with regard to these doctors, I see " castor oil tabloids "; that is hardly a prescription, it is an order ?—That is an order from the stewardess of the Royal Liverpool Golf Club.

Mr. Justice BYRNE : The two last are orders.

4638. Mr. NEVILLE : I should hardly have thought they wanted them at the Golf Club. Now, doctors do make mistakes in their prescriptions, do they not ?—Slips.

4639. And they have not, it may be supposed, such an accurate knowledge of the drug trade as anybody in the drug trade itself ?—No.

4640. You find a good many slips in prescriptions, do not you, with reference to drugs ?—I should not say a good many.

4641. A few ?—Occasionally.

4642. They are not confined to this mistake about tabloids ?—That is the most common.

4643. They are not confined to that ?—No.

4644. Of course, as we have heard from other witnesses, there has been an enormous sale of these tabloids for the last 18 years; is that so ? —Yes.

4645. Do you sell tabloids under your own label, or do you sell them under Burroughs & Wellcome's label ?—If a prescription comes for tabloids of Burroughs and Wellcome's the drug would be removed from one of their larger bottles (supposing it was for a small quantity), and it would be put into an appropriate bottle or box, with the directions attached, and then, of course, it would not bear their printed label, but it

would bear the words: "The tabloids. Take one three times a day," or whatever it is—we exactly follow the doctor's words.

4646. I follow that; but in retailing to the public, in selling over the counter, do you sell Burroughs & Wellcome's tabloids in bottles of your A own, with your own name on them?—No, never.

4647. Do you sell them in Burroughs & Wellcome's bottles?—In Burroughs & Wellcome's bottles.

4648. Of course, the public for a very vast number of years—for a good many years past—have been in the habit of associating "tabloids" B with this small form of compressed medicines that Burroughs & Wellcome have been selling in such enormous quantities?—Yes.

4649. With regard to the doctor's mistakes——?—Not mistakes those.

4650. Well, slips. With regard to these prescriptions, I will not use C a word that is under discussion, and I did not mean to beg the question in any way——?—You know those things are not drugs that Burroughs & Wellcome deal in even.

4651. That is just what I was going to ask you about. The point of it is that doctors have prescribed tabloids of articles not put up by D Burroughs & Wellcome?—Yes.

Re-examined by Mr. WALTER.

4652. My friend has used the terms "slip" and "mistake" in reference to tabloids in those prescriptions. In your view is it a slip or a mistake?—Neither.

E 4653. Does the use of the word "tabloid" in these prescriptions agree with your knowledge of the use of those terms by the medical profession?—Exactly.

4654. And what did they mean by tabloid in those prescriptions?—They meant a drug compressed into the shape——

F Mr. NEVILLE: I think I should like to hear the gentlemen tell us themselves what they meant.

Mr. WALTER: Very well.

Mr. JOHN BAIN, sworn.

Examined by Mr. WALTER.

G 4655. I think you are a chemist and druggist carrying on business at 4, The Quadrant, Lime Street, and 118, Robson Street, Liverpool?—Yes.

4656. You have had 30 years' experience in the business?—Yes.

4657. You have been in business on your own account for 19 years?—Yes.

H 4658. You, I take it, have been acquainted with the literature and goods of Messrs. Burroughs & Wellcome?—Yes.

4659. And you are aware of their claim to the word "tabloid" as a registered trade mark?—Yes.

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4660. I believe you, like many other chemists, have proprietary articles of your own?—Yes.

4661. Amongst others I think you make what you describe on your label as an ammoniated quinine tablet?—I do.

4662. How do you find that ordered?—People sometimes come in and ask for a bottle of our ammoniated quinine tabloids. A

4663. This, I think, is a bottle containing the goods aforesaid and the label which you use. (Handed)?—It is.

(Put in and marked J.B. 1.)

4664. There are a very large number of drugs put on the market in that form, the goods not only of Burroughs, Wellcome & Co., but of Allen & Hanbury, Parke, Davis & Co., and many other makers?—Yes. B

4665. So far as your experience of the public is concerned, how do you find they use the word "tabloid"?—They appear to use the word very indiscriminately indeed. Only about three weeks ago a lady came in for cascara segrada tabloids. On presenting her with a bottle of Burroughs, Wellcome & Co.'s tabloids I was told that was not the thing at all, and after considerable conversation—I might almost say cross-examination—I found the lady wanted a box of cascara capsules—solid extract of cascara, or semi-solid extract, in a soft gelatine capsule. C D

4666. It was called "tabloid" all the same?—She asked for it as "tabloids."

4667. I suppose you in common with other druggists keep a certain amount of display on the counter?—Yes. E

4668. Have you goods there labelled "tablets"?—Yes, similar to these.

4669. Do you ever have customers come in and ask for tabloids?—Yes.

4670. And do they identify a particular bottle of them on the counter, and say that is what they want?—Yes, they pick out a small bottle and put it in their vest pocket and say, "Those are the things." F

4671. What are those?—As a rule those refer to soda-mint tablets.

4672. Tablets?—We label them tablets.

4673. They are labelled tablets, but the public puts them into its pocket under an order for tabloids?—Yes. G

4674. This is a bottle of the soda-mint tablets. (Handed.)?—This is one.

(Put in and marked J.B. 2.)

4675. I think you looked up a few sample copies of prescriptions. Just look at those. (Handed.) Are those all orders for tabloids?—Those are copies of prescriptions taken by a short glance through one of our prescription books. In the first one I see here the doctor simply orders "tab. nasal B.W. & Co." and in the directions he says, "One tablet in a tumbler full of water, to be used as directed." H I

4676. Those are B. W. & Co.'s ordered as tablets?—Yes. The next copy prescription is of the 12th November, 1902:—"Tabloids

peptone, 5 grains, to be taken as directed." That is by a different doctor. The next copy is by Dr. Pitt Taylor. "Ferrous carbonate bi-palatinoids, Oppenheimer's, grain 5, send 100." The directions are—"1 tabloid to be taken three times a day for three days, two tabloids to be taken three times a day for three days; continue with three tabloids three times a day." The next copy is a prescription where the doctor says: "Take phenacetin 2½ grains, caffeine 1½ grains, send 12 tabloids; take two when the pain is urgent." In this case, of course, in reference to Burroughs, Wellcome & Co.'s list, you find their tabloids are not made with phenacetin 2½ grains and caffeine 1½ grains; I think, speaking from memory, it is 3 grains and 1 grain.

4677. Those are just a few you looked out in your current book?—Not exactly the current book, but in the third book back. The two current books are in use at present in our dispensing department, and I simply took a book from the shelf that had been recently put there.

4678. You did not look at the books in use at the present time?—No, I did not.

Mr. Justice BYRNE: I see they are dated 1901, and one of them in 1902.

(Put in and marked J.B. 3.)

4679. Mr. WALTER: I think these are the bi-palatinoids which the doctor directs to be taken as tabloids (handed)?—Yes.

4680. Those are the goods?—Yes.

(Put in and marked J.B. 4.)

4681. Mr. Justice BYRNE: Are these old stock or is that their natural colour?—That is their natural colour. The gelatine discs give them that colour.

4682. Mr. WALTER: I see there is something about bottles. Is that from lists or from people who call upon you?—I have observed in those price lists that are sent to us by manufacturing firms——

4683. You must not tell us, if you have not any of them here, what you have seen in a book. Is this from one of the makers? There is the end of a box from the glass merchants. (Handed)?—This is the end of a box; nine dozen of these bottles which we use for our compressed tablets have been sent to us by the manufacturing firm. The box is marked, "nine dozen half-ounce oval tabloids."

4684. That is the end of the box in which the glass bottles came?—It is.

(Put in and marked J.B. 5.)

Cross-examined by Mr. Neville.

4685. Who is the bottle manufacturer?—Edward Taylor & Company, Liverpool.

4686. Are they Liverpool manufacturers?—Yes.

4687. Can you speak to any other instance of their using "tabloid" except that particular one in connection with bottles supplied to you?—I suppose I am not allowed to speak of lists which I have seen.

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4688. Not if you have not got them here. Do you say he has always sent them in similar form to that ?—As far as I recollect.

4689. For how long ?—I have been using them for about 10 years.

4690. He has done it for 10 years ?—I think so. It really did not strike me particularly until lately. A

4691. You knew that "tabloid" was the trade mark of Burroughs, Wellcome & Co. ?—I did.

4692. Did you ever communicate in any way with the man who sent you the bottles under that name ?—No.

4693. You have known these tabloids as Burroughs, Wellcome & Co.'s B make for a number of years—how long ?—These tabloids ?

4694. You know "tabloids" as distinctive of their make ?—Yes, the name "tabloid."

4695. For how many years ?—I am not sure as to the date.

4696. I do not want to pin you to a year ?—About 18 or 19 years. C Of course they just came gradually on me. I remember their name very well in connection with pellets—at least tablets.

4697. You recollect "tabloid" when it first came on the market ?—I have just a hazy idea about the word gradually coming into use about that time. D

4698. Your recollection is quite right. It was in 1884. That would make it about 18 years ago ?—Yes, about that.

4699. You have known it ever since as the trade mark of Burroughs, Wellcome & Co. ?—As the word they claim as their trade mark. E

4700. Have you ever had any doubt that it was their trade mark ?—Unfortunately for myself I had a little experience of trade marks, and it led me to think that a word that is composed——

4701 Never mind what you thought. Have you ever repudiated the idea that it was their trade mark ?—I have repudiated it in my own mind F to a certain extent.

4702. Never mind what you did internally, but externally you have always recognised it ?—As far as my dealing with the public goes—yes.

4703. Have you ever dealt with anybody under the name "tabloid" or with the trade mark "tabloid" ?—Dealt with anyone ? G

4704. Yes ?—I have sold tabloids.

4705. Not of Burroughs, Wellcome & Co.'s make ?—If a person asked for tabloids we would sell Burroughs, Wellcome & Co.'s.

4706. Have you sold tabloids of other than Burroughs, Wellcome & Co.'s make ?—I have not sold tabloids knowingly other than Burroughs, H Wellcome & Co.'s make.

4707. That is what I thought you would say, what I understood you to say ?—Yes.

4708. Whatever your inward conviction on the legal point might have been you knew that Burroughs, Wellcome & Co. were known throughout I the trade as trading under the name of "tabloid" and "tabloids" on certain of their goods ?—Yes.

4709. On particular lines of goods ?—On certain lines of goods.

4710. Anybody knew that who knew anything about the drug trade? —I can only answer for myself.

4711. That was the general knowledge in the trade, was it not?—I assume they know; they ought to know.

A 4713. And you have never dealt in goods as "tabloid" unless they were Burroughs & Wellcome's make?—No, I have not.

4714. Supposing when the people have come into your shop and asked for tabloids of any article listed by Burroughs, Wellcome & Co., what have you given them?—My instructions were that Burroughs &
B Wellcome's goods were always to be supplied.

4715. But you find that numbers of the public come in and ask for "tabloids" when they mean "tablets," is that so?—Yes.

4716. And you find that numbers of the public come in and ask for "tabloids" when they mean "capsules"?—Yes.

C 4717. And you find that numbers of the public come in and ask for "tabloids" when they mean these things. (Indicating bottle)?—I cannot remember any of the public asking me for "tablets" as "bi-palatinoids."

4718. What is this document?—That is a prescription.

D 4719. You find doctors prescribe tabloids when they mean these things?——

Mr. Justice BYRNE: No, they call them bi-palatinoids and then say "take one tabloid or so many tabloids."

4720. Mr. NEVILLE: Then I am right when I say you found
E doctors refer to these things as tablets?—Yes, but not the public.

4721. But you have heard the public asking for "tabloids" when they mean "capsules"?—Yes.

4722. They probably do not know the name. I was going to ask you this. You sell a variety of different makers' goods do not you? You do not
F confine yourself to Burroughs & Wellcomes?—Yes, a very large variety.

4723. You stock a lot of different makes of the same articles?—Of tablets?

4724. Yes, of compressed medicine.—Not many.

4725. Several lines. You mean you do not confine yourself to
G Burroughs & Wellcome's?—No, not by any means. Others are prescribed as well as Burroughs, Wellcome's.

4726. Quite. What I mean is this: Beyond the compressed drugs listed by Burroughs & Wellcome you stock other lines?—Of similar drugs.

H 4727. Yes, I mean of similar drugs. You do?—Yes.

4728. And branded drugs or goods you sell under your own name? —We sell them under our own and also——

4729. Under a brand?—No, we use them for selling in bulk. If a person wants them in a small packet——

I 4730. If you sell them in a small packet you put your own label on? —Yes, there would probably be a label on.

4731. Yes, lines of similar goods to Burroughs & Wellcome you sell under your own name?—Some of them we do.

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4732. Where do you get them manufactured ?—We get them manufactured in Liverpool and Manchester.

4733. Do you deal with the Standard Tablet Company ?—No, I do not deal with the Standard Tablet Company.

4734. Have you ever had goods from them ?—I believe we do stock some of their goods ; that is to say, some they advertise to the public and there is a call for them. I believe there is one line of theirs we stock, probably two ; but I do not buy direct from them. A

4735. You do not buy direct. The goods that you retail under your name are not their manufacture ?—No. B

4736. Then these drugs you keep indiscriminately in a case, do you mean ? —Yes.

4737. Bottles of compressed drugs you keep indiscriminately in a case ?—No, not indiscriminately.

4738. You keep them in the same case with different lines ?—We keep Burroughs & Wellcome's in three cases and our own we keep in a drawer and also in a small case. C

4739. On the counter do you have the bottles all together ?—All our own are together.

4740. But do you have Burroughs & Wellcome's on the counter ?— They are not on the same counter. D

4741. Let us see if this is right. Is this a proper description of the way you do business. I will put it in that way. " I keep a large number of drugs and preparations of drugs, including those of Burroughs, Wellcome & Co., made up in the form of tablets or tabloids in cases on the counters of my shop " ?—Yes. E

4742. When you say in the form of tablets or tabloids, you do not mean that tablets and tabloids mean the same thing ?—No, not to my mind.

4743. " In cases on the counter of my shop." I see you say " in cases " ?—Yes. F

4744. So that the cases stand on the counter ?—Yes.

4745. " Customers frequently come in and ask for a box of tabloids of some drug or preparation, and without recognising it or waiting for an answer, they take up a bottle of tablets not prepared by Burroughs & Wellcome." That is an accurate description, is it ?—Yes. G

4746. It is very much what you told my friend. Just look at these two bottles. (Same handed to Witness.) You stock both those lines, do you not, of cascara sagrada, one of your own make ?—Yes.

4747. Who makes the tablets for you that are in the little bottle sold under your own name ?—Those are made by Evans, Sons, & Co ; at least they were made by Evans, Sons, & Co., of Liverpool. The firm has changed its name to ~~Edge, Sons, Lasher & Wood~~, Limited. H

Evans Sons, Lescher & Webb

4748. Where do you get the label from ?—They supply us with the label. We buy them labelled ready just as they are. I

4749. You buy them as they are. You do not buy them in bulk and distribute them into the little bottles ?—No, not those. We have them in bulk from Parke, Davis & Co.

4750. Those are a sample of one of the other lines you stock and of

the Burroughs & Wellcome tabloid, the cascara sagrada?—This is a sample of a bottle we stocked at one time, but I took exception to the label being too similar to Burroughs & Wellcome's. Previous to that I had a square shaped label, and the firm who supplied them by mistake A sent this. I took exception to them, and have not had any since.

4751. I am very much obliged. That is really what I put to you before. You thought it was rather too closely resembling the get-up of Burroughs & Wellcome's?—I did.

4752. But those were supplied to you some years ago, and you would B not have any more of them?—Not some years ago; probably twelve months ago.

4753. And you would not have any more of them?—No.

Mr. NEVILLE: Will you kindly hand those to my Lord? (Same handed.)

C Re-examined by Mr. WALTER.

4754. In answer to my friend you said that "tablet" and "tabloid" were distinct in your mind. Is there the same distinction drawn by the customers in your view?—No.

4755. How is it that the word "tablet" and "tabloid" have become D distinct in your mind?—I suppose simply through being in the drug business and understanding the claims of our friends, Burroughs & Wellcome.

Mr. FIENNES FOSTER, sworn.

Examined by Mr. WALTER.

E 4756. I think you are a chemist and druggist carrying on business at 29, St. Nicholas Street, Scarborough?—That is so.

4757. And you have had 38 years' experience as a chemist and druggist?—Yes.

4758. And largely deal also in homœopathic goods?—Yes.

F 4759. And I suppose you make, and do, a considerable dispensing business too?—Yes.

4760. You know, of course, Burroughs, Wellcome & Co.'s goods?—Very well.

4761. And you have known their literature?—Yes, quite well.

G 4762. And their claim to the word "tabloid" as a trade mark?—Yes.

4763. Do you ever have orders for goods under the term "tabloid" which are not goods of the manufacture of Messrs. Burroughs, Wellcome & Co.?—Frequently.

H 4764. Have you got a selection here of written orders, some 19 or 20 of them there, under the term "tabloid" for goods not Messrs. Burroughs, Wellcome & Co's. (Documents handed to Witness)?—Yes.

4765. Are all those orders there orders received by you, and orders

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under the term "tabloid" for goods not the goods of Messrs. Burroughs, Wellcome & Co. ?—All of these are.

4766. Are many medicines, homœopathic remedies and others, put up in a compressed form ?—Yes.

4767. Homœopathic remedies are not dealt in at all by Burroughs, Wellcome & Co. ?—Not listed at all, or made by them.

4768. And how do you find those goods ordered ?—They are ordered as "tablets" or "tabloids" quite indiscriminately.

4769. That is one branch of the public with whom you deal. Now, I take it you are brought into contact with medical men, too ?—Yes.

4770. And how do you find the term used by medical men ?—Some medical men seem to be well acquainted with the distinctive term "tabloid" and many do not.

4771. I think all these goods here are samples of the class of goods that you find referred to in those written orders. (Several bottles were handed to the Witness) ?—Yes, those are of our own manufacture.

4772. I think there is one amongst those orders asking for a tabloid-making machine ?—Yes, that is so.

Mr. Justice BYRNE: There is one which asks for Sunstroke tabloids.

Mr. WALTER: Yes, my Lord, all sorts of things.

The WITNESS: Might I explain to your Lordship ?

Mr. Justice BYRNE: No, it is not worth while, it only struck me.

4773. Mr. WALTER: I think you also had the privilege of communications from Burroughs, Wellcome & Co. threatening you for the use of their word "tablets" ?—I did.

4774. And I think they did not proceed with that ?—No.

Mr. Justice BYRNE: What are these things ?

Mr. WALTER: Those are merely put as samples showing the class of goods which are referred to in those orders, my Lord.

Cross-examined by Mr. Neville.

4775. How long ago was it that the question about tablets arose ?—Do you mean the communication from Burroughs, Wellcome & Co. ?

4776. Yes ?—In the year 1887.

4777. You set up the right to use "tablets," did you ?—Yes. Well, I did it in ignorance—quite in ignorance of any claim.

4778. I mean you did not submit to their claim with regard to "tablets" ?—No.

4779. And they did not press it ?—They did not press it any further.

4780. Have you known "tabloids" for a number of years ?—Oh, yes.

4781. Have you ever asserted the right to use the word "tabloid" ?—No.

4782. And I need not ask you, Mr. Foster, you never have used it ?—I never have myself.

4783. May I see these things which were put in ? I will have the

orders, if I may, first and then the samples. (Handed.) As I understand, you are a homœopathic chemist, are not you? You do not deal in allopathic medicines?—Yes, I deal in medicines of all kinds.

4784. But is your business mainly homœopathic?—Yes.

A 4785. And do all these orders refer to homœopathic medicines?—The term is scarcely applicable to all of them.

4786. But most of them?—I think most of them are so.

4787. And Burroughs, Wellcome & Co. do not list any homœopathic preparations?—They do not.

B 4788. And people order sometimes tabloids of homœopathic medicines?—They do.

4789. In which case they cannot get Burroughs, Wellcome & Co.'s goods?—No.

4790. These orders, you suggest, refer to those?—Those orders refer

C to that. Many of those orders are repetitions—prescriptions by medical men.

4791. You make these yourself?—Yes.

4792. What do you call these—flat?—I call them tablets.

4793. I know, but what shape? I cannot quite see.—There is a

D slight convexity on each side.

4794. But so slight it is hardly noticeable, is it?—It is noticeable.

4795. For all practical purposes that is flat?—It is nearly flat.

4796. Are these compressed drugs?—I do not know what that is you have in your hand.

E 4797. This seems to be charcoal?—Those are compressed.

4798. Charcoal is compressed. Ignatia amara?—Those are not compressed.

4799. But you get the orders for these as tabloids just the same?—Yes, just the same.

F Mr. ROBERT HAZLEWOOD JONES, sworn.

Examined by Mr. WALTER.

4800. You are a pharmaceutical chemist carrying on business at 88, Norwood Road, Herne Hill?—I am.

4801. And you have been in business there for some four years?

G —Yes.

4802. Prior to that you were with Messrs. Savory & Moore?—Yes.

4803. And prior to that you were a traveller in the drug trade?—Prior to my being in Norwood Road I was a traveller for three years. Prior to that I was for four years with Messrs. Savory & Moore.

H 4804. I see; I put it to the wrong period. In the course of your travelling in the drug trade had you to call on about 800 different doctors in various parts of England?—I called on, roughly speaking, some 800 doctors four times in the course of the year in the north of England.

4805. Now in travelling with your drugs did you carry tablets?

I —I did.

4806. Put up in bottles labelled " tablets " ?—I did not carry them put up in bottles ; I simply carried samples.

4807. By what term did you find the medical men you called on describe the goods you were displaying to them ?—As a result of my experience I should say that almost invariably medical men apply the word tabloid and tablet indiscriminately to any form of compressed drug of a tabellæ form or shape—tabellæ, I may say, is the form in the Pharmacopœia.

4808. The Pharmacopœia calls it tabellæ, and to any articles which, according to the Pharmacopœia, are tabellæ you found the words tablet and tabloid indiscriminately applied ?—I found that so.

4809. Have you in some instances seen on the shelves of the doctors' surgeries your bottles containing the goods you travelled in, labelled Tablets ?—I have.

4810. And by what term, pointing to those bottles, has the doctor given orders ?—If a doctor has been giving me an order he has taken up a bottle labelled tablets, and said, "Send me some bottles of tabloids." That was a daily occurrence.

4811. Mr. Justice BYRNE : About what years was this ?—I began to travel seven years back, and I was travelling for three years.

Mr. WALTER : From 1896 to 1899.

4812. Mr. Justice BYRNE : That is about right, is it ?—Yes, my Lord.

4813. Mr. WALTER : We have had the medical men. What is your experience with regard to the public ?—My experience with regard to the public is that they use the word tabloid in the same way—to mean a form of compressed drug, without special reference to any particular make.

4814. Four times a year I think it was you called ?—Four times a year.

4815. About 800 medical men you visited ?—Roughly speaking 800.

4816. Have you had instances of prescriptions by medical men for goods not Messrs. Burroughs & Wellcome's under the term tabloid ?—In the course of my experience it occurs again and again. I saw a single instance of it a day or two back if you would like to hear it.

Mr. NEVILLE : We should not, thank you.

Mr. WALTER : Tell me the goods.

Mr. NEVILLE : I object.

4817. Mr. WALTER : My learned friend objects. Is that a solitary instance, or are there many ?—No. It occurs constantly to anybody engaged in pharmacy.

Cross-examined by Mr. NEVILLE.

4818. You have visited in your round 800 doctors, I understand. In what parts of the country ?—In parts of Durham, Yorkshire, Cumberland, Westmoreland, Derbyshire, and so on, in the Midlands ; and, in fact, coming close to London.

4819. The whole of the north of the Thames almost ?—The ground that I covered was curiously mapped out.

4820. It did not cover the whole of it. Anyhow, you had 800 people on your list to visit ?—I should think about 800.

A 4821. Did you find them all unacquainted with the fact that "tabloids" were Burroughs & Wellcome's make ?—Oh, no.

4822. You knew perfectly well it was the exclusive name of Burroughs & Wellcome ?—I knew it was.

4823. And knowing that when you received an order for tabloids did

B you book it for another firm of makers ?—In the case of a doctor ordering from me tabloids I would point out to him that the word tabloid belonged to Burroughs & Wellcome, and did they wish me to send their goods, and in all cases it was, "Oh, no, send the same again."

4824. In all cases ? In not one case did they say they did want

C Burroughs & Wellcome's goods ? Is that so ?—I did not quite catch your question.

4825. I understood your answer to be that when they ordered tabloids, and you said, as you invariably did say, as I understand. "Do you mean Burroughs & Wellcome's make ?" they all said, "No." Is that

D right ?—There may have been one or two occasions, but as a general rule it was so.

4826. About 798 of the 800 said they did not want Burroughs & Wellcome's make, did they ?—I should not tie myself down to saying 798.

E 4827. Two or three out of 800 ?—I should say speaking broadly—roughly, I should say, 90 per cent.

4828. 90 per cent. of them did not want Burroughs & Wellcome's goods ?—Yes.

4829. Would not have them, in fact ?—No, they did not want to pay

F the price in order to get the name.

4830. Is your list a select list of doctors who want to buy drugs cheap ?—My list was the list of one of the firms of the highest standing amongst chemists in the country.

4831. I am asking you whether your list was a list of selected

G doctors who wanted to buy drugs cheap ?—They were generally a list of the doctors who had the best practices and would pay good prices for good drugs.

4832. The heads of the profession throughout the districts you travelled in ?—Yes.

H 4833. And only 5 per cent. of those knew that Burroughs & Wellcome were the makers of tabloids ?—I do not say that.

4834. Then we shall have to begin again. You visited 800 ?—Yes.

4835. 95 per cent. of those when they ordered tabloids and you said do you want Burroughs & Wellcome would not have them ?

I Mr. Justice BYRNE: 90 per cent.

4836. Mr. NEVILLE: Did I put it wrongly before as 95 per cent., because that might account for the answer ? Did I ask you 95 per cent. ?—I do not think you did.

4837. You see what my question was. You told me, as I understood

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it that 90 per cent. of the 800 doctors you asked said that they would not have Burroughs & Wellcome ?—Yes.

4838. Only 5 per cent. of the medical men who used the word tabloid wanted Burroughs & Wellcome's goods ?—They did not want Burroughs & Wellcome's goods.

4839. 90 per cent. of the 800 of the heads of the profession in the district you visited ?—Yes.

4840. That you say ?—I am speaking generally.

4841. Quite generally, I see. But generally that is what you mean ?—I am not taking every article Burroughs & Wellcome make. I am speaking of the compressed goods.

4842. These tabloids ?—Yes.

4843. You are quite sure about that ?—Perfectly sure.

4844. You were selling tablets, of course ?—I was.

4845. And you carried samples ?—I carried samples.

4846. Were your samples labelled ? Can you give me a sample of your samples ?—Of course. I have been out of that employment for four years.

4847. I thought very likely you could not ?—They were simply labelled " compressed tablets."

4848. As I understand you found them to use "tabloid" as descriptive of any form of compressed goods ?—Of compressed drugs.

4849. You also told us any form which would formally be described under the title of tabellæ ?—Yes, under the title of tabellæ.

4850. As a matter of fact, tabellæ applies not any more to compressed drugs than to any other drugs ?—It is the form introduced into the Pharmacopœia—tabellæ of certain preparations of that shape.

4851. It applies to certain compressed goods ?—No, it applies to any compressed drug of that class and description.

4852. That is what I asked. I want to show the amount of your knowledge. Tabellæ applies to drugs not compressed quite as much as it does to drugs compressed, does not it ?—Certainly not.

4853. Do you suppose tabellæ means a compressed drug ?—It means a compressed drug.

4854. That shows the extent of your knowledge of the subject ?—That shows my knowledge of the subject.

(Adjourned for a short time.)

4855. Mr. NEVILLE : I think I need only trouble you with one more question. You, of course, could not supply orders for tabloids : that you agreed about ; you told me that ; you quite understood that ?—Yes.

4856. According to your recollection, travelling amongst the heads of the profession, you succeeded in supplying orders, which were originally for tabloids, in 90 per cent. of the whole lot ; that is right, is it not ?—I should put it in another way, that is all.

4857. You have told us about the explanation ; but that is the result

—that you got orders where tabloids were wanted and asked for, and you took those orders, according to your recollection you know, in 90 per cent. of the whole lot; that is right, is it not; that is in accordance with your experience?—That is what I said.

A 4858. And you tired of travelling in the business in three years?—Yes.

Mr. NEVILLE: I am astonished.

Re-examined by Mr. WALTER.

4859. Were you travelling in Messrs. Burroughs & Wellcome's goods?

B —No.

4860. You were not?—No.

4861. Did the persons who gave you orders know for whose goods you were travelling?—Most certainly they did.

4862. Did they require the goods that you were travelling in?—They

C did. If I had supplied any others than those I was travelling in they would have been returned.

4863. Was there any suggestion or attempt on your part to obtain any orders for goods under the name "tabloids"?—Certainly not.

D 4864. You came here to give evidence as to how your goods were described by the doctors you called on?—I did.

4865. Did you come for any other purpose?—For no other purpose whatever.

4866. What was the description by which the doctors in 90 per cent. of

E of the cases described goods they knew to be yours?—"Tabloids."

4867. And any attempt that has been made in cross-examination to suggest that you were endeavouring to pass off goods as the goods of Messrs. Burroughs & Wellcome—is there any truth in it?—It is one of the privileges of counsel to suggest that.

F Mr. NEVILLE; I made no such suggestion.

4868. Mr. Justice BYRNE: What was the name of the firm you were travelling for?—The firm were Messrs. Brady & Martin, of Newcastle-on-Tyne.

4869. Did you get written orders from doctors?—The orders that I

G secured were entirely given verbally.

4870. No written orders?—No written orders whatever. They were given to me personally. I would go into a doctor's surgery and he would go round amongst the bottles that would want replenishing and would call out the name of what was wanted, and I would make a note in my book

H accordingly. That is entirely the way in which the orders were given.

4871. These bottles were labelled "tablets"?—They were labelled "tablets."

4872. Yet in 90 per cent. of the cases the doctors asked for "tabloids"?—Of course I said speaking generally. There are certain

I things, my Lord—it might assist the Court if I tell you that—for which Messrs Burroughs & Wellcome have a special reputation; and I could specify those, but it is not necessary to do so. In those cases

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Burroughs & Wellcome's preparations would be specified by the doctors and they would take no others.

4873. Really the thing that is puzzling me a little, and you will perhaps explain it to me, in this: Doctors have got bottles of things—I will say they have got what I call bottles duly labelled "tablets"?—Yes. A

4874. And yet they ask you for "tabloids" in 90 per cent. of the cases. Why should they say "tabloids" instead of "tablets"?—Because the word has got to be used indiscriminately to represent that little, small form of the article which as I say is "tabella."

4875. The puzzle to me is, why they should not have said, in say 40 B per cent of the cases, "tablets"?—"Tabloids" is rather a more euphonious word, I think; probably that is the reason.

4876. You think that when once the word got into use—that is what it really comes to, is it not?—Yes.

4877. When once the word got into use it was an attractive and a C pleasant-sounding word, and people, you think, preferred that word to the other, really?—That is my personal opinion.

Mr. H. J. Firmin.

Mr. HAROLD JAMES FIRMIN, sworn.

Examined by Mr. WALTER.

4878. I think you are a chemist and druggist carrying on business at D 59, Moorgate Street, London?—Yes, I am manager of the retail department there.

4879. What is the name of the firm?—E. Gould & Sons.

4880. And, I think, you have had 14 years' experience?—Yes.

4881. I think that firm are chemists by appointment to the London E Homœopathic Hospital?—Yes.

4882. I believe Messrs. Gould put up a large number of drugs in tablet form, do they not?—Yes, and they also manufacture them.

4883. They have both a manufacturing and a retail and dispensing F business?—Yes.

4884. By what description do you find tablets—homœopathic preparations—are described?—Do you mean generally?

4885. Yes?—Frequently by tabloids and frequently by tablets.

4886. Do you receive prescriptions also for drugs to be made up? G —Yes.

4887. I mean of these homœopathic preparations which are not the preparations of Messrs. Burroughs & Wellcome?—Yes.

4888. In many cases how are they ordered?—They are occasionally ordered as "tabloids."

4889. Speaking from your experience with regard to the public, what H in your view is the meaning in which the term "tabloid" is used by the public?—They simply refer to a small portable and generally a flat or convex disc.

4890. Have you enquired yourself of persons and asked what they meant?—Yes, I have frequently pointed out to them that tabloids were I

Messrs. Burroughs & Wellcome's trade mark, and enquired whether they required their goods, because if they did Messrs. Burroughs & Wellcome did not make them.

4891. And what answer did you get?—That they did not care at all what the make was; they simply wanted what they asked for and what they had had before. Occasionally they were rather annoyed on the subject.

4892. Mr. Justice BYRNE: May I get at this at the same time in order to get it on the note, if Mr. Walter will allow me to ask the question? I want to know this: When the public have asked for tablets, what have they referred to, in your experience? When they refer to tablets what do they speak of?—To a similar preparation to tabloids, apparently. There is no distinction in the mind of the public, or to a great number of the public.

4893. Wait a moment. When they refer to tablets they refer to some portable things, generally convex discs?—Flat or convex discs, my Lord.

4894. They refer to "a small portable and generally flat or convex disc"?—Yes, my Lord.

Cross-examined by Mr. LEVETT.

4895. When the public were annoyed how did you sooth them?—It depends largely on the individual.

4896. Did you give tablets or tabloids to sooth them?—In those cases they had tablets.

4897. They would be more soothing?—Yes, they would be more soothing.

4898. In any case I understand when anyone asked you for a tabloid you took care to find out that he did not want Burroughs & Wellcome's preparations?—Of later years, yes.

4899. How far do "later years" take you?—May I make an explanation?

4900. Certainly?—About five or seven years ago we did very little indeed with Messrs. Burroughs & Wellcome's goods, we were almost entirely homœopathic, in fact, we do not do very much now, although we are pleased to sell them when they are required.

4901. They do not make homœopathic preparations?—No. The result was that it practically did not concern us at all in those days. I am much afraid that if a customer had asked for tabloids, we knowing perfectly well what he meant, and homœopathic tabloids were not made by Messrs. Burroughs & Wellcome, we should have given him what he wanted without question. Of later years, having it impressed on our minds that a trade mark of that sort was a very important matter, we make careful enquiry in each case, both in the case of orders by letter and orders over the counter.

4902. Then let us go back to the earlier part before the five years. At that time, if you had had a tabloid made by Burroughs, Wellcome & Co., you would at once have supplied that?—Yes.

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4903. There would have been no question whatever?—Certainly not.

4904. If a man had come in for a tabloid, then you would of course have given it to him?—Quite so.

4905. My friend has kindly put a list in my hand of Messrs. Gould & Sons, who were your principals?—Yes. A

4906. On the 1st January do you find first some tablets; then "They are not compressed, but moulded." Look at the picture part first. (Book handed to Witness.) That is the shape of the bottle?—Yes, that is practically the shape.

4907. A short cylinder is the best way to describe that, is it not? B —Yes.

Mr. Justice BYRNE: I have seen them in bottles like that.

Mr. NEVILLE: Yes, my Lord, just like that.

4908. Mr. LEVETT: It says: "They are not compressed, but moulded." First, does your idea of a tablet involve compression?—I do C not think absolutely necessarily so—no.

4909. Will you give us your idea of a tabloid——

Mr. Justice BYRNE: You mean does that involve compression?

4910. Mr. LEVETT: I want your general idea of the word "tabloid"?—It is very hard to say, indeed. Lately, of course, D we are accustomed to associate "tabloid" with Burroughs, Wellcome & Co.'s goods.

4911. Mr. Justice BYRNE: Consequently with the shape, I suppose? —Consequently with the shape, but I do not think the matter of compression really com s into it at all. E

4912. Mr. LEVETT: May I take it in this way? The first tabloids that came upon the trade under that name were Burroughs, Wellcome & Co.'s?—Am I to answer that question?

4913. Yes?—I could not say for certain. I believe so. I have been led to understand so. F

4914. You may not go so far back as that. The first tabloids you knew of were Burroughs, Wellcome & Co.?—I must give the same answer to that—I believe so.

4915. Did not you from that get the idea that the tabloid was a sort of small convex disc that contained a drug?—When you speak of tabloids G you mean the first drugs compressed under that name, not the abstract idea of the word itself, because that idea of the word itself I do not know where I got it from.

4916. Mr. Justice BYRNE: You never got the abstract idea of the word itself until after you had become acquainted with the actual goods H of Burroughs, Wellcome and Co.?—That I am not quite sure of. "Tabloid" seems to have grown up with me. I have no doubt it is not actually so, but I do not connect the actual origin of the word with Burroughs, Wellcome & Co.

4917. You cannot take your memory back to remember the word at I all before the date when you got to know Burroughs, Wellcome & Co.?— Not definitely, no.

Mr. LEVETT: I will not trouble you further.

Mr. WALTER: Now, my Lord, I could go on——

Mr. Justice BYRNE : You may say you have so many more witnesses.

Mr. WALTER : Yes, I could go on, unfortunately for your Lordship, from now till Christmas.

A Mr. Justice BYRNE : Even my patience comes to an end, so you will not do that. You may say that you have others.

Mr. WALTER : Yes, my Lord.

Mr. Justice BYRNE : How many others have you except those who are mainly homœopathic.

B Mr. WALTER : A large number of those I have called are not homœopathis.

Mr. Justice BYRNE : How many, can you tell me ?

Mr. WALTER : Mr. Carteighe is not homœopathic, and Mr. Blain and, I think, the majority of mine. There are only two or three of mine

C who are homœopathic.

Mr. Justice BYRNE : I was only asking so as to make sure. Mr. Jones was homœopathic mainly, and so was Mr. Firmin.

Mr. WALTER : Mr. Blain is not homœopathic. He carries on an ordinary business.

D Mr. Justice BYRNE : Foster is homœopathic.

Mr. WALTER : I do not think any of them were exclusively homœopathic.

Mr. Justice BYRNE : No, but mainly.

Mr. WALTER : It is the rarest thing that a chemist and druggist

E does not sell homœopathic remedies.

Mr. Justice BYRNE : I do not want to argue it, but if I found a large majority of your witnesses had been homœopathic, mainly, I should suggest that you call two or three more general witnesses. I do not think that is so.

F Mr. WALTER : No, my Lord. I have divided them up. As far as we could we have taken doctors from different parts. We have chemists from Brighton, from Liverpool, from Warrington, from London and from Scarborough. We have taken them as far as we could fairly wide apart.

G Mr. NEVILLE : Your Lordship follows in this case. I do not make any admission as to what any other witness would say- -I cannot.

Mr. Justice BYRNE : How many more witnesses have you ?

Mr. WALTER : I have not any more here. After your Lordship's suggestion I have exercised a discretion and I tell your Lordship—my

H friend may admit it or not—that I can go on from now for a week.

Mr. NEVILLE : I do not in the least mind my friend saying that. All I say is that I do not admit it.

Mr. WALTER : I do not ask you to admit it.

My Lord, first of all let me deal with the evidence on both sides.

I What I want to ask your Lordship to find as one of the most pregnant fact in this case is : Where does the literature come from which enables one to test the accuracy of the statements made by witnesses ? From the Plaintiffs' or the Defendants' side ? The Plaintiffs' evidence has been conspicuous by the failure to produce a single document from any one of

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their witnesses. They could have examined any of their books for copies of the prescriptions or anything of the kind. I carefully put the question to Plaintiffs' witnesses as to whether or not, when they were giving the evidence with regard to either prescriptions or orders, it was purely from their memory or if they had made any search. No search had been made in any case in any of their documents by any of the medical witnesses or any of the chemists who were called by the Plaintiff. In view of what has been proved before your Lordship I ask you to believe that in every solitary case of a witness who has been called on behalf of the Plaintiff if their books were examined you would find the word "tabloid" used in precisely the same loose manner as it is clear has been the case from the actual documents produced by the witnesses I have been able to call. Understand, I am not for one moment impugning the perfect *bona fides* of every witness who has been called, but one knows perfectly well how absolutely treacherous memory is on a matter of this kind. They have not looked into their books, they have not been advised to look, they have not been asked to look, and very likely it has not been called to their attention to look. One would have thought that at least there would have been some search through prescriptions or matters of that kind by the chemists called on the other side to see whether or not "tabloid" had been used in the broad sense in which it has been used. Your Lordship remembers the chemists who were called one after another on behalf of the Plaintiff, none of whom had had any difficulty, none of whom understood the public—they did not give any evidence with regard to what the public understood at all, and they carefully abstained from giving any evidence of what the public understood. Now what is the evidence that has been given by the chemist and druggist witnesses called on behalf of the Defendants? Is it not absolutely beyond dispute that the word "tabloid" on that evidence is a word which has no signification whatever as meaning the goods of any particular person. I will take it for a moment on the parole evidence: It is a word which means an article, not an article made by a particular person. That is the evidence with regard to parole evidence. Now test the thing, which is the best way of all, by documents. Take the manufacturing chemist whose articles are advertised as "tablets" against whom not a suggestion is made that tablets are not fully indicated in his advertisements and absolutely clearly. Your Lordship knows the bundle produced—some 400 and over of orders for those goods as tabloids. Is that a concurrent use of the word tabloid in its meaning as applied to a small article of compressed drugs? It is somewhat pregnant evidence upon the question as to whether or not there is a use of the word in its ordinary meaning and without its secondary meaning. It does not rest there. It does not rest with the manufacturers. I think every chemist whom I have called, or nearly every chemist, has been asked to look up his prescriptions or to look up his orders, and what do we find there? "Tabloid" used in precisely the same way; "Tabloid P.D. & Co."; "Tabloid Parke Davis"; "tablets Oppenheimer"; "bi-palatinoids, take so many tabloids." Orders for goods in the same way are ordered under "tabloid." Evidence given by

every chemist that the customers who come and order goods for him use the term "tabloid" and "tablet" perfectly interchangeably.

Mr. Justice BYRNE: Would you mind at this point telling me what is the earliest use of the world "tabloid" which you have shown on documents not meaning Burroughs & Wellcome clearly?

Mr. WALTER: I forget the date of the earliest document. There were prescriptions, of course, of 1893. The earliest appears to be in Hoblin's Dictionary of Terms in 1887 and the Practitioner of 1887, and the Extra Pharmacopœia of 1888. The Practitioner was in April, 1887. Hoblin's Dictionary of Medical Terms was in 1887, and the Extra Pharmacopœia in 1888. The Century Dictionary in 1889. Foster's Medical Dictionary in 1899, and then begin a large number.

Mr. Justice BYRNE: Of the actual prescriptions. can you give me about the earliest date?

Mr. WALTER: The earliest year I have here is 1893. You will remember that Mr. Pears produced a large bundle.

Mr. Justice BYRNE: Let me have Mr. Pears' bundle. They came from 1893 to 1903. I just want to look for the earliest example while you are upon that.

Mr. WALTER: Your Lordship remembers, if you look, that 1893 is the commencement of the majority of them. Your Lordship will find in the particular bundle there 1893 to 1900, and in 1901, 1902, and 1903 there is a large number in that bundle.

Mr. Justice BYRNE: There is a certain number in 1893, I see. The bulk of them seem to come from 1900.

Mr. WALTER: Yes, because he was merely asked to look up to see if he had earlier ones. It is a wonder we have got any documents at all of 1893, because your Lordship knows in a business one does not keep this kind of documents, although it happens that we were fortunately able to find some as early as that. That evidence was given; not only so, but we had Mr. Foster from Scarborough, who produced another selection of his—about 19 others relating to all goods properly described as "tablets." Your Lordship will remember that nearly all my witnesses, Mr. Young, Mr. Bain, Mr. Abraham, Mr. Pears, and Mr. Foster—all of the chemists I called—produced bundles of other prescriptions or orders showing this use. Then your Lordship remembers the evidence of Mr. Carteighe, of Dinneford & Co. Mr. Carteighe, who has been in business a great number of years, and is Past President of the Pharmaceutical Society, a Member of the Council of the Pharmaceutical Society, and one of the examiners of that body. You will remember his telling your Lordship he was in constant contact both professionally and socially with medical men, and when asked as to the use by medical men of "tabloid" and giving his experience as to what it was, he said it was used absolutely indiscriminately. I was almost going to say I call in aid our own common sense in the matter. I mean, to suggest that in the year 1903 that anybody who uses "tabloid" is infringing some right of Messrs. Burroughs, Wellcome & Co., is robbing the English language of a word which has become a part of the English language.

Mr. Justice BYRNE: That raises a very curious question, as I have said

Nov 26, 1903 more than once. Assume for a moment that the original meaning was goods of Burroughs, Wellcome & Co., and nothing else, and that in the course of years those things get so well known that people constantly refer to things of that shape and size as big tabloids, so that in that case it would be a secondary meaning. It would be giving to the English language a secondary meaning.

Mr. WALTER: Unfortunately, my Lord, when a word once has a meaning it cannot become a secondary meaning.

Mr. Justice BYRNE: According to the earlier cases, the Velveteen case, for instance, I have to carry myself back to the period of the registration.

Mr. WALTER: I quite agree, my Lord, that "Bovril" might afterwards acquire a meaning; it had no meaning at the date of its birth, but "tabloid" always had.

Mr. Justice BYRNE: What would be the result if that was not so?

Mr. WALTER: If "tabloid" has no meaning at all?

Mr. Justice BYRNE: Had no meaning.

Mr. WALTER: If "tabloid" had no meaning at all, then the Kodak case and all those cases will have settled that question altogether. I am perfectly aware that I have to show that the word "tabloid" at the commencement was descriptive, and as I already, in opening, dealt with it, and shortly will deal with it again, it was used as descriptive. There was one little piece came out to-day which helped to settle my meaning as to this. Your Lordship remembers Mr. Foster, a chemist, at Scarborough, was sued, or threatened, in the year 1887 as an infringer of the "tablet" trade mark.

Now, my Lord, it is true they had registered "tabloid," but as your Lordship knows, when I come to deal with their documents, they had never used "tabloid" as a trade mark at all, they used it as a purely descriptive word, and if they have made it descriptive they must take the consequences. They have used it as being a word of a definite meaning—the meaning it had at its birth—the meaning it had when they first used it—the meaning it has never lost; and it is not until the year 1896, or somewhere thereabouts, that they endeavour to claim the monopoly of that word under their registered trade mark. That, my Lord, is the history of their advertising I say they used it, as it was, as a descriptive word. They never applied to their goods "tabloid" as being a trade mark, in the first instance. They used it, as your Lordship remembers, in the Judgment in the Cellular case, where the first thing the Court looked to, to see whether the term was descriptive or not, they said: We look at the advertisements of the persons who are claiming it as their trade mark. They are using it descriptively. It is a descriptive word; from the very use by them of the word it is shown it was a descriptive word and nothing else.

Now, my Lord, we looked to see how we could get, as it were, in tabloid form, the views of a large number of medical men. Mr. Jones was a gentleman who was called before your Lordship. What his cross-examination meant, if it was not an intention to attribute to him a

deliberate passing off of the goods of his manufacture as the goods of Messrs. Burroughs, Wellcome & Co. I do not know. Such meaning was, however, disclaimed by my friend. Mr. Jones called on 800 doctors four times a year for three years. He called with goods which were tablet goods. His practice was to call on country doctors in their surgery, soliciting orders for his goods, the goods of his firm, who were perfectly well known to the doctors upon whom he called. They described, not he, his goods as "tabloids" about 90 per cent. Can it be said that the word "tabloid" is a word of such secondary meaning that it means the goods of Messrs. Burroughs, Wellcome & Co., and nothing else, after such evidence as that? What reason is there to doubt the accuracy of that?

Mr. Justice BYRNE: But his experience in this way begins with the year 1896.

Mr. WALTER: Quite so, my Lord.

Mr. Justice BYRNE: By that time, undoubtedly, the word "tabloid' was well known on the market.

Mr. WALTER: I quite agree, my Lord, but known how?—and that, my Lord, is what I put in the first instance. There was a very admirable phrase given by one of my witnesses, who said—which exactly sums up the position I put—"I am entitled to use the crossing, but I do not go when a cab is driving across it."

Mr. Justice BYRNE: Yes, he volunteered that. He had thought that well out.

Mr. WALTER: He may have; it was not in his proof, but it struck me as a particularly happy way of expressing it.

Mr. Justice BYRNE: You are entitled to use it.

Mr. WALTER: Messrs. Burroughs, Wellcome & Co. have put up sign-posts in every chemist's shop, warning them under all the pains and penalties of the law if they use the term "tabloid." Why, "because it is our registered trade mark." Now there is a motion before your Lordship to remove that difficulty out of their way, and to enable the word to be used, as it ought to be used, in its true meaning of "tabloid," namely a word indicating a kind of tablet, or whatever other article of that small description is commonly understood by the term "tabloid." Your Lordship remembers the recent pamphlet which was put in somewhat late in the case, the threatening letter—it appears to have been pink to chemists, and judging by the evidence of the doctors it appears to have been green to doctors, threatening them with all the pains and penalties of the law if any infringements of Messrs. Burroughs, Wellcome & Co.'s goods were used. Your Lordship remembers the passages I read from the Cellular case, and the remarks of Lord Davey in that case with regard to the principle to be applied where questions of this kind arise. Supposing Messrs. Burroughs & Wellcome had taken out a patent in the year 1884, and had described articles made by them as tabloids, at the end of 14 years, although they and nobody else had sold tabloids, and although they had advertised tabloids all over the world, everybody could have made and sold as tabloids those goods. That is the law. That is the

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Linoleum case. Everybody who patents an article and calls the particular article by a particular name in his specification——

Mr. Justice BYRNE: Gives that name to the language.

Mr. WALTER: Gives that name to the language at the end of 14 years. And now what does Lord Davey say?—that the same principle has to be applied elsewhere. If they are sole manufacturers of particular goods, it is no good coming afterwards and saying, "Oh, but nobody else was doing it." Nobody else was manufacturing, and therefore no difficulty arose. It is exactly the same with a trade mark. The monopoly under a patent is no different to the monopoly under a trade mark. I am here attacking their monopoly as a trade mark, and saying they have none. They are claiming the monopoly which they have built up, and upon which they have threatened the world, under monopoly rights, namely, trade mark rights. They are saying, "Never mind whether it arose under a trade mark, never mind that we had no right to so monopolise, we have in fact monopolised by means of our threats under our trade mark, and whether our trade mark is good or bad, we should be entitled to stop you just the same." Now in order to do that they have to make out that the word "tabloid" means their goods, and nothing else, that anybody ordering tabloids, anybody speaking of tabloids, as applied to medical goods, means the goods of Messrs. Burroughs, Wellcome & Co. and nothing else. The 400 people who wrote their orders to Mr. Pears did not mean it—not one of them. The 19 other people who sent their orders to Messrs. Foster did not mean it. The doctors who wrote their prescriptions which have been produced by the various chemists did not mean it. The doctors who ordered Mr. Jones' goods did not mean it. The public do not mean it, and the whole basis upon which protection is given is the protection of the ultimate purchaser, and nobody else. The whole basis upon which a passing-off action is founded is that you shall not put into the hands of a person the opportunity of passing off to the public goods which they did not intend to purchase. That is the whole basis of a passing-off case. There is not a solitary trade witness who has not admitted that the claims that he recognised were monopoly claims. Every one of them have admitted that they recognised monopoly claims. They were aware of the monopoly claims made by Messrs. Burroughs & Wellcome, and they alone.

Now, my Lord, taking all the witnesses who have been called on behalf of the Plaintiffs, we, of course, have had a great array—a very large number. Doctor after doctor admitted that his patients asked him if they could have their medicine in tabloid form. Your Lordship remembers a large number of medical witnesses called on behalf of the Plaintiff who admitted in cross-examination that they were asked by their patients if they could have their medicine in tabloid form. "Tabloid form." What is the meaning of "tabloid form"? In tabloids. In the shape which is associated with the term "tabloid"—with the shape T the word "tabloid" means. It is a vicious circle one has to argue in in a cnse of this kind—you always come back to the one thing—"tabloid," it reeks with meaning.

Mr. Justice BYRNE : You mean there is a sort of atmosphere about it.

Mr. WALTER : I do not know whether it is an atmosphere or not, my Lord. It is an English word. The mere fact, as has been pointed out—I called your Lordship's attention to two cases—that it first saw its birth at a particular time does not make it an invented word.

Mr. Justice BYRNE : Not necessarily, I agree.

Mr. WALTER : Or a new word in the sense of not being an English word. It is a word composed of an English word and a known suffix used constantly in the English language.

Mr. Justice BYRNE : I am not quite sure that that is strictly accurate (I think what you mean I do not quarrel with), undoubtedly it was a word which was not used before ; all the evidence goes to that.

Mr. WALTER : I quite agree.

Mr. Justice BYRNE : The question is whether it was a word so constructed in accordance with ordinary rules of construction as to convey meaning.

Mr. WALTER : Certainly.

Mr. Justice BYRNE : Meaning "a description of the character or quality of the goods."

Mr. WALTER : I do not desire to put it any higher than that. I am not prepared to say in this case, because unfortunately, although I have some evidence, for the purpose of this action your Lordship must assume that there is no evidence of a user of "tabloid" before 1884, or whatever it was.

Mr. Justice BYRNE : The curious thing is when the thing was first mentioned to me I thought "tabloid" was quite an old word, but I am driven to this ; I think it must be because I have got so accustomed to these goods on the market——

Mr. WALTER : Of course, your Lordship has heard it everywhere, as we all do. One cannot talk in the English language without using the word. I put it as high as that—that it is robbing an Englishman of the right which he is entitled to.

Mr. Justice BYRNE : Ot developing his language properly ?

Mr. WALTER : Certainly, my Lord. It is an attempt to prevent the proper development of the English language. There is as much evolution going on in a language as there is in everything else, and old words are constantly tending to become, as it were, too full of meaning. There are constantly in the English language grafts upon those old words expressing refinements of meaning. They arise in every language—particularly in English, with its association with so many root languages. I do not care who was the person who actually was present at its conception or birth, but what I do say is that the word having come into the English language it cannot be appropriated, it at once takes its place as a word in the English language having a definite meaning, and therefore could not be appropriated in that sense. Therefore that being so (and I am dealing only with the case for the moment upon the question of the passing off part of the case) I say the onus is upon them to show that the word has

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acquired a secondary meaning, and it is further upon them to show that that secondary meaning has obliterated the first.

Mr. Justice BYRNE: I am not quite sure what you say the meaning is. The moment it came into operation what was the meaning?

Mr. WALTER: Whatever it is now.

Mr. Justice BYRNE: That does not answer me.

Mr. WALTER: A sort of tablet.

Mr. Justice BYRNE: A sort of tablet?

Mr. WALTER: A sort of medicine tablet.

Mr. Justice BYRNE: You do not suggest it is "table" and "oid"?

Mr. WALTER: That is the definition of tablet. Tablet is derived from table. It is the French tablet—tabella. Tablet is the old French medical term. I have looked at the old dictionaries.

Mr. Justice BYRNE: There is a quotation from Lord Bacon. That might mean a very different shape or form.

Mr. WALTER: I do not know. It is not necessary that a word of that description should be a word of precise meaning. I mean if one comes to test any word in the English language in that way, by minutely attempting to define it, it is very difficult. No word I know of has so absolutely a defined meaning that you can say what it means only; but a tablet was a known thing, and this was a word to be applied to similar articles.

Mr. Justice BYRNE: Yes, that is true. It was also a word that was applied to a great many other things.

Mr. WALTER: Tablet, my Lord?

Mr. Justice BYRNE: Yes.

Mr. WALTER: But a tablet medically was a perfectly understood term. A tablet had been introduced to the British public by Messrs. Burroughs & Wellcome in a form which was well understood. Messrs. Wyeth or Messrs. Burroughs & Wellcome themselves had introduced to the public the term tablet, which, as your Lordship knows, they had also endeavoured—although that word was a word of no greater definitional meaning than tabloid, convey to the mind a very fair idea of what was intended—to appropriate themselves as a trade mark, and endeavoured to stop others under it, but had not the courage of their convictions. But tabloid is just as definite as tablet. One's idea in reading the word tabloid is just as definite whether or not any persons accentuate the compression, or whether some persons accentuate "made by Burroughs & Wellcome," or some accentuate "a kind of squashed pill" kind of idea. Others think more whether it is round, others think whether it is oval and so on. Each person's idea shows that they all centre round very much the same sort of idea— and that is the idea of a tablet—absolutely the same thing. If your Lordship asks me to define it in an exact sense, I cannot define it in an exact sense any more than I can define "tablet" in an exact sense.

Mr. Justice BYRNE: I think it is not an unfair enquiry to say, you say this is not a fancy word?

Mr. WALTER: Certainly.

Mr. Justice BYRNE: That form of word is obviously a new thing.

Mr. WALTER : Yes.

Mr. Justice BYRNE : What do you say it is composed of. The word itself, you say, is composed of two things.

Mr. WALTER : I should have said myself that it was an ordinary A variant of a known word, "tablet." That is what I should have said myself, although I see the dictionaries take "table plus oid." Of course, the medical term "tabella" was a perfectly well-known thing. If your Lordship says "table-oid" you get "tabloid." "Table-oid—tabloid." Necessarily in the ordinary process of the tendency of the language——

B Mr. Justice BYRNE : "Tabula" meant a plate, did it not ? Tabula meant something you write on.

Mr. WALTER : 'Tabella" was the medical word, the very word in the pharmacopœia.

Mr. Justice BYRNE : That does not imply shape or compression as C far as I know.

Mr. WALTER : If the doctor orders a tabella you do not get a soup plate.

Mr. Justice BYRNE : No.

Mr. WALTER : But if he orders a tabella you get something that is D going into your mouth. After all, what is it ? It is a little tablet to go into your mouth. What is an acid drop ? Your Lordship gave the best instance of the whole lot when you mentioned the acid drop.

Mr. Justice BYRNE : Ah, but I am instructed now –that is lenticular.

E Mr. WALTER : As a matter of curiosity, I am told they are called acid tabloids, but I do not know, and it is not in evidence.

Mr. Justice BYRNE : I cannot altogether shut my eyes to things that go on before me in the course of years with a large family. I have seen, I think, acid tablets of quite a square sort of shape.

F Mr. WALTER : Yes, my Lord, acid tablets.

Mr. Justice BYRNE : The "Wee Macgregor" indulged in a "taiblet"—I do not know what shape that was.

Mr. WALTER : Of course, my Lord, we did discuss before your Lordship for some time a barley-sugar case in which we had as one of the G witnesses a doctor ; and, I think, your Lordship remembers there were any number of these things, little tablets ?

Mr. Justice BYRNE : Yes, there were.

Mr. WALTER : Little tiny things about the size of your finger nail.

H Mr. Justice BYRNE : Yes, I remember it now you mention it, very well.

Mr. WALTER : There were a whole lot of those. They are all "tablets" in the same way, but still "tablet" has just as defined a meaning as "tabloid." Under those circumstances I say first of all on I the passing-off, that the word has primarily a meaning, and that that was a meaning which it did not require to have attributed to it by anybody or by any user. I say, at its inception I grant for the purposes of this case that the collection of vowels and consonants had not been seen, but I say that the moment those words were put together first of all there was

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no invention in the proper sense of the term at all, and it was merely the forming of an English word from an English word and an English suffix. And it was a word which was well recognised as meaning a small variant on the meaning of the original word. I say further that as used by Burroughs & Wellcome, it was used in that sense, and used as descriptive. I say further that the word at once took its place in the English language and from that time down to this has continued to have its primary meaning. I do not carry the evidence as to that back further than 1887; but in the books to which I call your Lordship's attention —I show it there in that sense—I then carry it back to 1893 in the actual orders from the public for goods of that form. Goods to which the term is properly applicable, and not goods the manufacture of Messrs. Burroughs & Wellcome. I show that practice continuing from that time to the present day. I show that it is used in prescriptions. I show that it is used by the public. I show that it is used verbally and in writing. And I ask your Lordship to say that therefore they have failed to make out that the word has acquired its secondary signification, which is necessary for the purpose of establishing their case under the head of passing off. I say further that when they attempt to show that it has acquired a reputation, that the whole of the evidence they have called can be explained, and is properly to be explained, not by any reputation that has been established, but by reason of the monopoly claim made—a monopoly claim threatened to be enforced, and that they cannot in that manner attempt to build up this case of the exclusive use. That is one of the things that is the strongest evidence against them. It is true that if I conld not show that there was any user, I am not prepared to go the length of saying that if the word had not any other use at all; and if I was unable to call anybody to show any document or to show, in fact, that there was any user of this except under their circumstances: that it was the mere fact that they had a monopoly claim, which was bad as a monopoly claim, and which had been obliterated, it is not necessary for me to argue it in this case, and I am not arguing in this case, that the destruction of their monopoly right would necessarily deprive them altogether of their right as to passing off. That is a common law right. In that same case of the cellular clothing, that is merely indicated by Lord Davey. All he says there is that in a case of a monopoly claim, you must scrutinise still more closely the way in which they attempt to make out their case. It is not sufficient evidence alone to say we have had a monopoly. Perfectly true, but you have got to go further, said the Judge; you have got to show that not only have you a monopoly, but that nobody else uses it in any other sense. Therefore, I say that in this case their evidence goes for very little. What evidence have they called? Every witness they have called has recognised the fact that the claim made was a claim under a monopoly right. My witnesses, trade witnesses, whom I have called before your Lordship have said: Why run into the lion's den? They are not going—it is an expensive business—to attempt to dispute, to enter into the lists with Messrs. Burroughs & Wellcome. It is a very expensive business, and people do not care about it. I say

that mere evidence based upon a monopoly claim first of all has to be narrowly looked at, and that renders it still more essential for them to show that they have acquired rights otherwise.

My Lord, I say that they have failed in this case to do it, and that they cannot get away from the body of evidence which has been called before your Lordship, homœopathic and otherwise, as showing that the word used in its primary meaning is used as not meaning the goods of Messrs. Burroughs, Wellcome & Co., and for this reason I say on the passing-off part of the case they must fail.

Now, my Lord, as regards the Motion, I have opened that and I shall not say anything further about that. I have to hear what my friend says on the Motion.

Then as regards what is alleged as the actual passing off—as regards those three—your Lordship sees there was no case ever fought here on that basis, that we had any claim for B. & W. What I say about that is that we have not any memory of it at all. I cannot call anybody who knows anything about it. Five months elapsed between the dates. No claim is made and no written communication of any kind, and the thing is gone. We do not know anything about it. No claim has ever been made, and this action never would have been fought except on the basis they are here to fight it, namely, the broader issue, the question whether or not the word "tabloid" has acquired its secondary meaning which they say.

Mr. Justice BYRNE: Then, with regard to the other cases, was it shown in each case they were not the goods of Burroughs, Wellcome and Co.?

Mr. WALTER: I think so.

Mr. Justice BYRNE: You do not make any point of that?

Mr. WALTER: I do not make any point of that. Mr. Wellcome was asked, and he said he had been through the bottles. That particular question was asked.

Mr. NEVILLE: Yes.

Mr. Justice BYRNE: I thought it was, but you did not say anything about it.

Mr. WALTER: No, my Lord, but he was asked.

Mr. NEVILLE: My Lord, of course some little confusion of mind is necessarily to be anticipated where, for the sake of convenience, you deal in one and the same argument and at one and the same time with two totally distinct matters—one, whether the Plaintiffs are entitled to succeed in their action; and the second, whether they are entitled to retain their trade marks upon the register. I want, in the first instance, to deal with the question of passing-off, upon which depends to a great extent, or to some extent at all events, the success or failure of the Plaintiffs in their action.

Dissociating my friend's argument from all connection with the question of registered trade mark, it amounts, as I understand it, to this, that we cannot succeed in a passing-off action brought against a retail chemist because although *ex concessis* "tabloid" was well known as descriptive of Burroughs & Wellcome's goods in the trade, he says that

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that meaning was not attributed to it by the public. What inference does he draw from that and ask your Lordship to draw? Why this, that consequently all retail chemists were entitled to sell any goods that they pleased under the name of "tabloid," and that is the case made in the Defence. I was much interested in my friend's argument, but I do not need to travel outside the evidence of the Defendants' own witnesses to put an end to that case, because, if I take the manager of the Defendants' shop in Manchester, he himself says that he never would sell to a member of the public under an order for "tabloid" anything except Burroughs, Wellcome & Co.'s make, except in such cases where it appeared beyond question that an error had been made, and that something was referred to which Burroughs, Wellcome & Co. did not and could not make, such as a patent medicine patented by somebody else. Mr. Bransby says that, and he says that the instructions to all the assistants were to that effect. If that is the case the Defendants intended to make he gives it away in a moment. I have not even to stop at Mr. Bransby, without criticising their other evidence, because when we come to their most strenuous advocate, Mr. Pears, who himself manufactures and sells drugs saleable with a large percentage of profits and who nobody could doubt was as powerful an advocate in the box in the interests of the general trade as anybody could find—I will not say anything more against him than that, but I will say that because I think it is thoroughly justified—what does he say? He says that no honest manufacturer and so honest chemist would in his opinion sell any goods under the name of "tabloid" to anyone unless, owing to some exceptional circumstances, they were convinced that the order was not intended to be for the goods of the makers whose goods were universally known in the trade as being "tabloid" and "tabloid goods." If that is so, what becomes of my friend's case, and what is the case of the Defendants with regard to the accusations made against them? Not when it comes to the evidence that they were entitled to do it, but that as a matter of fact they did not do it, and that if by any chance goods not the goods of Burroughs, Wellcome & Co. were given in response to an order for tabloids it was pure accident, an accident over which they could have had no control. Let us test that. Mr. Bransby comes as their representative, the only representative we have had from them, the man who was responsible for the execution of the order in the case of the prescription with "B. W. & Co." actually upon it. He says that up till the middle of 1902 they sold no compressed goods except the compressed goods of Burroughs, Wellcome & Co., and that they invariably served, both up to and after that date, when they were asked for "tabloids," Burroughs, Wellcome & Co.'s goods, and no others. And he says that no distinction was made in their shop between "tabloid" and "tabloids B. W. & Co." or "tabloids Burroughs, Wellcome & Co." He said to his mind the two things meant precisely and exactly the same thing, and it did not matter in the least to him whether he got an order for "tabloids" or "tabloids B. W. & Co."; he would only supply Burroughs, Wellcome & Co.'s goods because he knew perfectly well that that was the name under which they

traded and that "tabloid" was the name of their goods. What happens? Up to the middle of 1902 he does not stock any but Burroughs, Wellcome & Co.'s goods of this character. After the middle of 1902 he admittedly does stock them. He not only
A stores them but he puts them in bottles precisely similar to Burroughs, Wellcome, & Co.'s bottles. He pu s them in the same case as the bottles of Burroughs, Wellcome & Co., and he asks you to believe that the assistants can discriminate, and that, carrying on the trade in the way in which he admittedly does, other articles will not be given out instead
B of Burroughs, Wellcome, & Co 's, although, as your Lordship will recollect, the bottles are not on the one hand bottles with Burroughs, Wellcome, & Co.'s name on them and on the other hand bottles with another name upon them, but have in many cases the same name upon them because they have been put up by Thompson & Capper themselves out of larger
C bottles, and there is absolutely no mark on the bottles to distinguish one from the other; the only possibility of preventing substitution being a suggestion that the assistants in the shop knew which side of one particular case to go to when they wanted a particular class of goods. That is the way in which he explained how the business was carried on between 1902 and
D 1st January, 1903. On the 17th January, 1903, our Writ is issued. Of course, if we are to believe Mr. Bransby, since the time when he stocked other lines of goods of the same character, that is within a very few months—I will not say more than that—something comes to Messrs. Burroughs, Wellcome & Co. with regard to Messrs. Thompson
E & Capper which induced them to send test orders to the shop in Piccadilly, Manchester, of Messrs. Thompson & Capper, and twelve cases are produced before your Lordship in each of which there was an undoubted order for tabloids, and in each of which the goods of another maker were substituted. Was there ever a stronger case of
F passing off? A case in which we do not want to depend upon the evidence of a single witness we called, except the evidence of persons instructed to go to the shop who went and gave their order, sometimes written and sometimes verbal, and brought back the goods delivered to them—in every case not the goods
G of Burroughs, Wellcome & Co., but of somebody else. When of course we restarted the case, we attributed a great deal of importance to the three cases in which, where "B. & W." was actually mentioned, goods of other makers had been supplied, but when we come to the trial and come to Mr. Bransby's evidence, we find that is wholly
H immaterial. I daresay your Lordship has the passages in your mind, but I should like just to refer to them. He says that makes no difference to him. If your Lordship will look at page 306, there is this. I referred him to his book in which he has "tabloid" and "tabloid B. & W." in his prescriptions, and I say to him:
I "Just look at this and you will see within three orders, there are two for tabloids—one is next but one to the other. (Book handed to Witness)? —Yes. Q. There you have written 'tabloid' in full?—Yes. Q. No. 'B. W. & Co.'?—No. Q. According to your notion and your knowledge there was no object in putting 'B. W. & Co.' in the book at all?—In this

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case it probably was not in. Q. It is not in the book there, but it meant to your mind precisely the same thing whether 'tabloid' was ordered or 'tabioid B. W. & Co.' ?—I should give Burroughs, Wellcome & Co.'s tabloids for this. Q. But it meant precisely the same thing to your mind if 'tabloid' was used or 'tabloid B. W. & Co.' ?—Yes. Q. You knew they meant the same thing ?—I knew myself. Q. Therefore there was no distinction in your mind whatever between giving goods in answer to an order for 'tabloids' and in answer to an order for 'tabloids B. W. & Co.' ?—They meant the same thing to me. Q. They meant exactly the same thing, and in either case you knew it was a fraud to pass off any other goods instead of the goods of Burroughs, Wellcome & Co. ?—Yes. Q. So that the supposed distinction between 'tabloid B. W. & Co.' and 'tabloid' does not exist in your mind at all events ?—They have kept me posted up in the matter, so it does not exist in my mind. Q. So that all these instances we have got stand on exactly the same footing—the people in the shop knew perfectly well what 'tabloids' meant ?—Yes."

Now what becomes of my friend's case which he has argued so fervently and so well, that there was no fraud in supplying the public with tablets when the public asked for tabloids, and giving them the goods of another maker, because to their mind tabloids did not mean any make at all. The representative of the Defendants themselves says this: "In either case, whether 'tabloids' were ordered or 'tabloids B. W. & Co.,' you knew it was a fraud to pass off any other goods except the goods of Burroughs, Wellcome & Co. ?—Yes." So all the cases I have put to him which we proved stand on the same footing, and he says, "Yes." Consequently your Lordship is not troubled to consider what is the effect on the public mind which the long familiarity with Burroughs & Wellcome's goods had, and what the effect on the public mind was which was occasioned by the habit of some chemists of putting Burroughs & Wellcome's tabloids and sell them under their own name. He knew that it was passing off, if he gave in answer to an order for tabloids anything but Burroughs & Wellcome's goods. He knew perfectly well and admits that it was a fraud. His answer is: "We did not do it." What is our answer to that? Let us just see what he has to say about that. It is on page 302. He is given one of his own bottles, and he is asked at the top of the page: "First of all, what are those ? Are those Burroughs, Wellcome & Co.'s tabloids or are they somebody else's tablets ?—I cannot say for certain." That is, "I cannot recognise myself the difference between the goods," which was that it was a fraud to give goods which were properly to be given in answer to an order for tablets. "Q. That is just what I thought. How is the assistant going to say ?—You mean if he can tell from the look of the bottle and so on." Then your Lordship says: "What Counsel means is suppose somebody came in and asked for tabloids of cascara sagrada, how would the assistant know whether to give him that or not ?—We should make certain from the case where we got it from, or it would be in a different end of the case—the same case." Observe that he starts with an

explanation : " We should make certain from the case where we got it from." Then he sees that will not do, and he says : " Or it would be in a different end of the case—the same case." I say : " In the same case," and he answered : " It might be in the same case. Q. I will take your
A own suggestion, it was not mine. In the same case there are cascara sagrada tablets and tabloids in bottles, both of them bearing the name 'tablets,' and both of them bearing Thompson and Capper's name ?—Yes, there may be." That is two bottles totally undistinguishable, one if it is used in answer to an order for
B tabloids fraudulent, and the other honest." Q. In one of those bottles are tabloids, in the other are tablets. A person comes into the shop and asks for cascara sagrada tabloids. What is to prevent the assistant from handing the tablets instead of tabloids ?—Simply that he would not do it; I mean he would not do it all except by accident. Q. But is not that an
C invitation to accident ?—I do not think so. If they were kept close together it might be. Q. But in the same case ?—But a case is 6ft. long. Q. How is he going to tell one from the other ?—He has got to go to one particular case to get the article ordered. In that case are two articles exactly the same in appearance, one of which he
D may sell, and the other of which he cannot sell without fraud ?—It would not be correct to have them in the same case. It would only be by accident they would be in the same case." Compare that with his answer immediately before and then form, if I may say so, a conclusion as to the reliability of the Witness in the
E box. I do not think I need trouble your Lordship on that point. On page 304 there is this : " (Mr. Neville) : The Writ was issued in January this year and some time last year you say you altered your method of dealing and began to take other manufacturers' goods. Surely you can tell me more definitely than ' some time in 1902.' When
F was it ?—I suppose some time about the middle of the year." He said over again of course that tabloids must not be supplied unless they are Burroughs & Wellcome's. Then he says this a little lower down. I asked him : " So that within six months, at all events, of the time when you began to stock other people's goods, this action was com-
G menced, and these accidents had happened ?—Yes. Q. So that, to put it shortly, there was nothing to show the customers whether they got Burroughs, Wellcome & Co.'s goods or whether they did not ?—Except our word. Q. You did not say anything to them about it. If they ordered tabloids you gave them the goods ? You did not always accompany that with
H an explanation ?—If they asked for it. Q. They trusted to you to give them what they asked for ?—If they asked for Burroughs, Wellcome & Co.'s ? Q. No, if they asked for tabloids ?—I do not know that they asked for tabloids, mostly they speak so indistinctly —' tabloids' and ' tablets ' sound so much alike. We are
I close to the railway station, and they are mostly in a hurry." Then I ask him to stay for a moment. Q. " You told us a moment ago you had never sold anything but Burroughs, Wellcome & Co.'s goods in answer to an order for tabloids ?—No. Q. You told us you knew what the term meant, and that the assistants knew perfectly well and were

Nov 26, 1903 — ordered to give nothing but tabloids in answer to an order for tabloids, and you never suggested there was any difficulty in understanding what the orders were. Now you say you never could tell whether it was 'tabloids' or 'tablets'?—No, we could not. Q. So that you often could not tell whether they wanted Burroughs, Wellcome, & Co.'s or something else?—Yes. Q. Then what did you give them—something else on the chance?—No, in practically every case Burroughs, Wellcome & Co.'s. If people asked for tablets we gave Burroughs, Wellcome & Co.'s tabloids, which we concluded were the same thing. Q. Are you speaking now of before the middle of 1902?—And after. Q. Then you did not sell the other tablets at all"? That is, my Lord, the tablets that he had begun to stock in the middle of 1902. Just see how he deals with this question: "Then you did not sell the other tablets at all, and if that is so, what was the good of stocking them?—Stocking other makes? Q. Yes. If you gave them nothing but tabloids, whether they asked for tabloids or tablets, I do not see the use of stocking other makes?—Because it was more convenient to stock other makes. Q. How could it be if you were not going to sell them over the counter?—Why should not we sell them over the counter? Q. Because you said whether the customer asked for tabloids or tablets you gave him Burroughs, Wellcome & Co.'s goods?—I am talking of the practice when we had Burroughs, Wellcome & Co.'s goods only." Your Lordship remembers, immediately above he says that both before and after the middle of 1902 the same course of business took place. "I thought you would say that, therefore I asked you whether that referred to before the middle of 1902 or after, and you said before and after?—Yes. Q. After the middle of 1902 we know you did stock other people's tablets?—I beg your pardon. We are talking about 'tabloids' generally, are we not?" Then I ask him, "Do you say that after you stocked tabloids and tablets you served Burroughs, Wellcome & Co.'s goods in response to an order for either tabloids or tablets?—Yes. Q. Then, if that is so, may I ask what was the good of stocking any other maker's tablets?—Because we found they were more convenient, and Burroughs, Wellcome & Co.'s preparations were being asked for in a less and less degree."

Now, my Lord, this is the man, and the only man, brought forward before your Lordship on a charge of fraud by Thompson & Capper, and this is the kind of answer he gives when he is challenged with what took place, and when he is asked to explain, or given an opportunity of explaining, how the thing could have taken place without fraud I venture to say that more utterly ridiculous answers were never given, such answers were never given by a truthful witness in the box. One always sympathises with a man in that position, I know, and I do not wish to press hardly on him. A manager is put forward, he has to bear the whole brunt of the charge, he has his employers behind him, he knows that if he does not——

Mr. WALTER: You ought not to say that. Mr. Thompson is dead. You know Mr. Capper could not be called. You know Mr. Bransby is the only member of the firm who knows about it.

Mr. NEVILLE: Then a good deal of what I have said ought to be modified, certainly. I was quite aware of the unfortunate death of one of

the partners, but Mr. Capper made an affidavit, and I did not suppose he would not be in a position to go into the box to give evidence.

Mr. Justice BYRNE: It was so stated when an application was made for the case to stand over.

A Mr. NEVILLE: Yes, I was not here. All I know about it is that Mr. Capper joined in an affidavit, and I had no reason to suppose that he was incapable of giving evidence. At all events, my Lord, I hope I have not said a word I ought not to say about the witness, but I still say here was a man brought forward to give evidence, and the only man put B forward to answer this charge of fraud, and this is the only way in which he can do it, and I submit that really as far as evidence was concerned the moment Mr. Bransby's evidence was heard the case was over; it was absolutely an undefended case; beyond proving I had gone and asked for tabloids and got what I did get I need not give more evidence. I do not C know whether your Lordship quite follows me.

Mr. Justice BYRNE: In a sense, yes, but I am not quite sure that I follow the argument to its completion. In order to establish your right, first of all you have got to show, not merely that the particular man had in his mind Burroughs, Wellcome & Co.'s goods, but that in fact he meant D Burroughs, Wellcome & Co.'s goods.

Mr. NEVILLE: Is that so, my Lord?

Mr. Justice BYRNE: I am only putting that to you.

Mr. NEVILLE: Let me see if I can put it, my Lord, in a clearer way. It is a question, of course, of evidence, but the strongest evidence E that you can possibly have is the admission of the person charged.

Mr. Justice BYRNE: Yes.

Mr. NEVILLE: Now we must take Mr. Bransby here as the person charged, although he was only in a subordinate position.

Mr. Justice BYRNE: Yes.

F Mr. NEVILLE: But we know how it was, and he is there to represent the firm. Mr. Walter says for him, as I understand his argument, it was no fraud for a chemist to retail goods other than Burroughs, Wellcome & Co.'s, in answer to an order for tabloids, because, he says, owing to the use that had been made of the word by the public, they had G a perfect right to give anybody's goods in answer to an order for tabloids.

Mr. Justice BYRNE: You are putting outside the case about "B & W." That stands on an entirely different footing.

Mr. NEVILLE: Yes.

H Mr. Justice BYRNE: You prove cases of people asking for tabloids and getting other than Burroughs, Wellcome & Co.'s goods.

Mr. NEVILLE: I prove twelve altogether, three written and nine verbal.

Mr. Justice BYRNE: But then Burroughs, Wellcome & Co. were I not mentioned in reference to those, except with the three.

Mr. NEVILLE: Only with the three; that is quite correct.

Mr. Justice BYRNE: Then in order to establish the right, must not you first begin by saying the word "tabloid" had on the market acquired the secondary meaning of meaning Burroughs, Wellcome & Co.'s goods? I am now assuming that you are wrong about your trade mark point,

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because otherwise the burden might be another way, because you would start with having invented a fancy word denoting your goods, and the fact that it had subsequently acquired a secondary meaning might make a difference. But you are arguing now whether your mark is good or bad.

Mr. NEVILLE : Quite.

Mr. Justice BYRNE : I say, supposing your mark is bad, is not the first thing you have to do to show that the word "tabloid" had acquired a meaning on the market, at the time the transaction took place, that it meant Burroughs, Wellcome, & Co.'s goods to the exclusion of all others.

Mr. NEVILLE: Quite true, my Lord. What I meant to say about that was this : That that was so was admitted by Mr. Bransby and by every other witness that was called, either by myself or by my learned friend. So far as the drug trade was concerned, so far as chemists were concerned, so far as the drug market was concerned, that was admitted.

Mr. Justice BYRNE : You say, in point of fact, I ought to find in fact on the evidence, that, assuming there was no trade mark right, nevertheless the word had come to mean, as applied to drugs, the goods of Messrs. Burroughs, Wellcome & Co. only.

Mr. NEVILLE : My Lord, I put it strongly as this : I say that in the trade there is absolutely no conflict of evidence at all, that the evidence of every witness that was called is identical

Now, my Lord, that there is no escape from, I think—because I am speaking not without consideration ; and I think your Lordship will be satisfied that there is absolutely no diversity of evidence there ; they all say exactly the same thing : within the trade "tabloid" meant Burroughs, Wellcome & Co., and nothing else. But my friend raises the argument that although that was true with regard to the trade, it was not true with regard to the public, because he said the public in many cases used the word "tabloid" when they did not mean Burroughs, Wellcome & Co.'s goods.

Mr. Justice BYRNE : With regard to the trade, I think you are absolutely right, Mr. Neville. As far as I remember, practically they all said that of Burroughs, Wellcome & Co.'s goods. But with regard to the doctors——

Mr. NEVILLE: That does not stand on the same footing.

Mr. Justice BYRNE : No.

Mr. NEVILLE : But I do not think that matters except as extending the generality of the knowledge. It seems to me that the real point in issue here is the knowledge within the trade. Do they know that "tabloid" means the goods of Burroughs, Wellcome & Co. ? If they do, they surely are not entitled to assume that when a person uses "tabloid" he is not using it in the right sense.

Now, my Lord, that being so, my friend says : Yes, but you had a right, owing to this diversity of opinion amongst the public, to give tabloids when they were asked for. But it is no use my friend saying that. It is not a question of law, it is a question of fact, and the witnesses say : No. we could not, without fraud, give to a customer over the counter in response to an order for tabloids, any other goods but those of Burroughs, Wellcome & Co.'s make.

There were one or two good exceptions to a general rule, where one or two perfectly respectable men said : " When I was asked for a tabloid of something which Burroughs & Wellcome could not supply because it was a patent medicine of someone else's, I treated the latter part of the description as overruling the earlier part, and I felt myself justified in giving what I knew they meant," but every witness said that upon a simple demand for tabloids in his shop he was bound to supply, and considered himself bound to supply, Burroughs & Wellcome's goods. There is no difference about that. Mr. Pears' evidence was that no respectable chemist in the country would sell other goods than Burroughs & Wellcome's in response to an order for tabloids. What I want to point out is that this is not a legal argument at all, it is a question of what the people in the trade thought—what was their knowledge of the word. It does not do to come and say : " Oh, there were people who used," and many people if you please, I do not care how many " the word in another sense." The question is, what did you understand by the use of the word " tabloids." When people come into your shop, and the answer of every one of them, whether for the Defendants or for the Plaintiffs, was, I understood them to mean Burroughs & Wellcome's goods, and that I gave them. Here is a good instance from this very gentleman himself, on page 296, my learned friend has given me. He is asked at Question 3815 : " Tabloids are very widely asked for by the public, are they not ?—Undoubtedly. Q. And you would not, as you told us, have served any article except Burroughs & Wellcome's in response to an order for tabloids ?—That requires some qualification perhaps. Q. Does it ? From what I understood you to say before, I thought that that was your method of doing business. Do you say that you do supply the goods of other makers when tabloids are ordered, or that you do not ?—In cases where I am absolutely certain that Messrs. Burroughs and Wellcome's preparations are not intended, and I can see clearly what is intended, and it would be impossible to get them from Burroughs & Wellcome's, then I give what I can see is absolutely intended. Q. Like the instance we heard of from another witness, where there was a patent medicine which no one could vend, and where somebody had attached ' tabloids ' to that name, and you knew perfectly well Burroughs & Wellcome's could not give them. In case of that sort you would fulfil the order for tabloids, although they were not of Burroughs & Wellcome's make. In every other case you would not justify yourself in doing so ?—No, if I knew they were Burroughs & Wellcome's preparations, and they made them, certainly their preparations would always be given." Now you see, my Lord, what he would have said if there was any foundation for my learned friend's case in substance —I mean for his argumentative case. What he would have said would have been this : Oh, the word had got into such general use that when a person came in and asked me for " tabloids " I did not know what they meant because although I knew the fact that it was Burroughs & Wellcome's word, the public were so ignorant on the subject that it had no definite meaning to their mind in which case you would have heard that when they asked for " tabloid " they would have been asked : Do you mean

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Burroughs & Wellcome's make, or any make? It was never done. When they asked for tabloids they always got Burroughs & Wellcome's, and with the exception of Mr. Abraham, who was the last witness, he did say that sometimes questions were asked latterly—the whole of the evidence is at one on this point that in response to an order for "tabloids" nothing but Burroughs & Wellcome's goods are given except where there is an obvious mistake.

Now, my Lord, what is the use of my learned friend arguing after the word has so lost any connection with Burroughs and Wellcome that the chemists do not understand, and do not understand the public, when they ask for tabloids, to mean Burroughs & Wellcome's goods. If not, how comes it that they always give them Burroughs & Wellcome's goods, and that Mr. Bransby himself says, in his opinion it would be a fraud to do anything else, because your Lordship will not forget the conclusion of his cross-examination, in which he says: To my mind, there is no distinction between "Tabloid, B. W. & Co." and "tabloids." They mean precisely the same to me, and in the view I take it would be equally fraudulent.

Mr. Justice BYRNE: Fraudulent towards you? That is the real question. A man may come into a shop and may ask for a tabloid and not know the difference, as many of us did not till quite recently—tell one's attention is called to it in this case. Suppose you go into a shop and ask for a tabloid not knowing whose goods tabloid refers to at all as a member of the public, but the shopkeeper does know that the word is appropriated only to a particular maker, it is none the less fraud on that particular maker that there has been no fraud on the purchaser.

Mr. NEVILLE: You could conceivably prove that there has been no fraud on the purchaser. That is to say, where such a thing had been done you might call the purchaser, who would say: "I did not use it in that sense."

Mr. Justice BYRNE: You are not entitled to assume the man doses not know.

Mr. NEVILLE: I assume the word has one meaning and one meaning only, and a person comes and asks for it under that name.

Mr. Justice BYRNE: He knows that it has that meaning only to the trade.

Mr. NEVILLE: But he knows that the proper meaning of the word and a person comes in and asks him for the article under that name. Just conceive an argument that would say he is entitled to assume that the person is using the word not in its right significance and as he understands it, but in some other significance in which he does not understand it.

Mr. Justice BYRNE: You would still say it would be a fraud supposing the ultimate purchaser was not misled?

Mr. NEVILLE: I should say it was an equal fraud. He knows that is where the fraud comes in. He knows he has no right to sell "tabloids. Put it in another way. This is an illustration of how it acts upon the manufacturer. It would be a fraud supposing that someone recommends me to buy tabloids, which he has a perfect right to do because the ultimate consumer does not trouble himself so much about the name of the maker as about the article he has

had recommended to him, or he has known from trying and likes. He may not in the least know that Burroughs & Wellcome are the makers of tabloids, but someone says: "I advise you to get chlorate of potash tabloids, you will find them excellent things for the throat"; he goes in and asks for tabloids. In response to that order he is given something which is not the make of Burroughs & Wellcome. Supposing even he was questioned there, and said, "I do not know who the maker is; I was told to get tabloids, and those are what I want." Surely it would be a fraud on the part of the assistant or shopkeeper to give him anything but Burroughs and Wellcome's goods. A good deal of the value of these trade names is the way in which they get identified in the mind of people who have heard of the article and do not in the least know who the maker is. A fraud would be made on us that it would be practically impossible to prevent, if a man could come and say "yes, I know what tabloid means but I do not think the man who used it did and consequently I gave him something else." I submit that will not do; and here the extraordinary and unusual strength of this case is that out of the mouth of the Defendants' own witnesses we prove our case up to the hilt and show that there has been a passing off which commenced somewhere after the time when they began to stock other people's goods in the same lines in the middle of 1902, and your Lordship can, I think, form a fair impression of the extent to which it had gone on when you consider that in those few months there was time to receive information, to make the tests, and to get 12 cases in which other goods had been substituted for those of Burroughs & Wellcome's.

My Lord, I submit that that really absolutely concludes the Defendant in the present case, and I should be prepared to leave it entirely upon that. Perhaps, after all the evidence that has been called, it is right to say a few words about that generally.

Now, my Lord, we wanted to show, and I think we were right in endeavouring to show, that the reputation of tabloids, as Burroughs & Wellcome's manufacture, was a wide one and was not limited to the trade itself. It extended to the profession throughout. And, my Lord, I think the evidence that we gave upon that point surely was so strong as to render the conclusion irresistible that throughout the profession tabloids were known as Burroughs & Wellcome's make. It is perfectly true, I daresay, that there are doctors who do not know. You can find ignorant people in any profession and in any business and in any trade—people who do not know what is the common knowledge of the bulk of the profession. If you search England from top to bottom, out of the enormous number of doctors you will be able to get a few who would say, We did not know the difference between tabloids and tablets, or that tabloids had anything to do with the maker. But just consider the position of the people who do say that. They have had year after year ever since they have been in the profession, unless they are very old men, Burroughs & Wellcome's Diary sent to them year after year, in which the matter has been called attention to with increasing and increasing vehemence as the years rolled

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on. And consequently they must have shut their eyes as well as their ears, if they have reached the present time without ascertaining that "tabloids" were the make of Burroughs & Wellcome. We called leading men in the profession simply for this reason. We wanted to obviate this kind of comment upon our evidence; if we had relied upon general practitioners and persons of no great note, it would inevitably have been said to us: "Oh, yes, you can get a doctor here and there who knows who Burroughs & Wellcome are, and who has thought there was a connection between tabloid and Burroughs & Wellcome. But that is not true of the profession; that is only really true of the individuals you have called and all the evidence that they give to the effect that their opinion is the common knowledge of the profession is very weak. Therefore you cannot say more than that half a dozen, or a dozen if you please, doctors have been called to say, "We know Burroughs & Wellcome make tabloids," but you cannot rely on that as professional knowledge, showing that their reputation, at all events, has spread throughout the profession.

A B C

But, my Lord, when you call men such as we have called, and they tell you one and all that they have always associated "tabloid" with Burroughs & Wellcome and with nobody else—when you have men of known position, men who represent the profession in a specially peculiar way, you cannot, I venture to think, doubt this, that it is a widely-spread and really universal knowledge throughout the profession, although there may be instances of doctors who do not know. When you contrast their evidence with the evidence of the doctors who were called on the other side, against whom I do not want to say a word, you must see that the enormously preponderating weight of evidence is on the side of those who maintain that tabloids was well known throughout the profession as referring to the goods of Burroughs & Wellcome. My Lord, really what the doctors themselves say does not come to very much. Take the gentlemen who were here to-day—I mean those who deny the knowledge. I think they all say they first knew of the use of "tabloids" as a manufacture of Burroughs & Wellcome, but what they did not know was that Burroughs & Wellcome had the exclusive right to the name, and although they knew that the tabloids they were aware of were Burroughs & Wellcome's make, they did not know that there might not be other makers of tabloids, although they had never seen any tabloids made by any other person. The doctor I have in my mind said: Under that impression, although Burroughs, Wellcome & Co. made the only tabloids I had ever seen or known, yet there might be other makers of tabloids, and I used the word "tabloids" as descriptive of the kind of medicine I had seen vended by Burroughs, Wellcome & Co., but not with special reference to their make until it was called to my attention by their literature that they claimed the exclusive right to the word, when I immediately ceased to use it in the sense in which I had used it before, and I have never used it so since. Surely that is just the sort of thing you would expect to find; but it does not weaken the mass of evidence we have called to show what the

D E F G H I

knowledge of the profession was. Then to eke that out a most extraordinary device was resorted to. All the chemists were asked, and I confess we rather let ourselves in for it, if I may say so, because I cannot help thinking it was irregular and of exceedingly small weight to ask a man in one profession what the general knowledge of the other profession might be—my friend has depended almost entirely upon the chemists' view of what the doctors know. I do not know that that carries it very far. Then, finally, we have the gentleman who travelled. My friend cannot understand what my cross-examination was directed to unless it was to show that it was fraudulent. It was not to show anything of the kind. It was to show that his evidence was absolutely valueless and incredible. It may be, and I daresay he persuaded himself so, that what he said was perfectly true; but that it had the faintest connection with anything that had ever taken place in real life, I venture to ask your Lordship to entirely disbelieve. A more incredible story was never propounded by a witness on his oath in any witness box, I should think. He goes about selling tablets, he goes round for three years to 800 doctors, the same people over and again four times a year, and they one and all insist upon calling tablets tabloids. He says, "No, no, they are not tabloids, they are tablets." It is no good. The next time he goes they ask again for tabloids and he cannot convince them in three years, he cannot persuade them ever to use the word tablet for what they want, although he has told them over and over again that tabloids are a particular make of a particular maker.

Mr. Justice BYRNE: And although they have "tablets" on their bottles?

Mr. NEVILLE: Yes, my Lord, I am wrong in saying never—in 10 per cent. of the 800 what I have said does not apply.

Now, my Lord, that is the evidence upon which you are asked to disbelieve the evidence of the eminent men whom I have called before you as to what the knowledge of the profession is.

(Adjourned to to-morrow morning at 10.30.)

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
26th November, 1903.

BEFORE
MR. JUSTICE BYRNE.

Burroughs, Wellcome & Co.

—v.—

Thompson & Capper.

IN THE MATTER OF THE TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER OF THE PATENTS DESIGNS AND TRADE MARKS' ACTS, 1883-1888.

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In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
Friday, November 27th, 1903.

BEFORE—
MR. JUSTICE BYRNE.

BURROUGHS, WELLCOME & CO.

— v.—

THOMPSON & CAPPER.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY, appeared on behalf of the Plaintiffs (instructed by Messrs. MARKBY, STEWART & Co.).

Mr. A. J. WALTER, and Mr. J. H. GRAY, appeared on behalf of the Defendants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

SEVENTH DAY.

Nov. 27. 1903

Mr. GRAY: Before my friend Mr. Neville begins, we have found another book containing a reference to "tabloid." It is dated 1894.

Mr. NEVILLE: My Lord, it is a little late to have further evidence.

A Mr. Justice BYRNE: It is.

Mr. GRAY: If there is anything my friend wants to do with regard to the document we are quite satisfied to have further evidence if necessary.

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Mr. NEVILLE : I should prefer not to reopen the evidence.

Mr. Justice BYRNE : The time is really past. You have a book dated 1894. I do not think it will carry you further than what you have got.

Mr. GRAY : Perhaps not. I only wish to call your Lordship's attention to it.

Mr. NEVILLE : My Lord, I have but little to add with regard to the action to what I submitted to your Lordship before the Court rose yesterday. But one thing I should like to do, and that is just to classify the Defendants' witnesses a little, so that your Lordship may see exactly what weight of authority you have to set against the evidence called by the Plaintiffs so far as it differs with it ; in very few points does it differ with it at all.

My Lord, they called four doctors, all of them from Liverpool. Three of them described themselves as homœopathic. They called four chemists from Liverpool and Manchester. They called one chemist from Scarborough and one from London, and three out of those six chemists described themselves as homœopathic, and, of course, one need not say that the distinction is material, because the person who deals with homœopathic remedies is not familiar with allopathic drugs, as he does not administer his drugs in the form adopted by allopaths. The consequence is it largely diminishes the weight of his testimony if you find he is a person not really conversant with the trade in question.

Then, my Lord, I wanted to make one criticism upon the Defendants' evidence which is contained in the prescriptions of doctors, and orders received for drugs not listed by Burroughs, Wellcome & Co. in which the word " tabloid " has been used. Now some of those—and I daresay if we were to go through all of them, a good many of those—do bear out the Defendants' point, the Defendants' point being that the word " tabloid " is not always used accurately, either by the public or by the doctors, not always used in the sense which those concerned in the trade attach to it, that is as the goods of Burroughs, Wellcome & Co. So far as you can find " tabloid " connected with the initials of another firm I agree that that bears out the proposition to that extent—I mean that it is evidence in support of that proposition. But so far as it simply is a case of a reference to drugs not listed by Burroughs, Wellcome & Co. under the name of " tabloid," I join issue with the suggestion and with the inference altogether, because I say : No, it does not prove anything of the kind. What it does prove is that the doctors in question do not know the limit of Burroughs, Wellcome & Co.'s list. It is quite consistent with the idea that they want Burroughs, Wellcome & Co.'s drugs, and suppose that Burroughs, Wellcome & Co. make up the particular drug that they want. In that they are mistaken. But your Lordship sees that those orders classify themselves into two kinds of orders, one of which, it is true, shows an improper use of the word " tabloid," a mistaken use, if you use all the epithets of the word " tabloid " apart from Burroughs, Wellcome & Co. Of course we have had these things put in without explanation, but in any case, in order to make them available as evidence you must show that the mistake of the doctor was not in

supposing that Burroughs, Wellcome & Co. dealt in drugs which they did not deal in, but in supposing that "tabloid" referred to the make of other firms than Burroughs, Wellcome & Co. Then in the case of a patent medicine a doctor may know the name, he may not know, and you cannot A assume that he does know until it is proved, that it is a patent medicine, or if it is a patent medicine, if it is not the patent of Burroughs, Wellcome & Co Therefore, if he asks for a tabloid of it, it simply means that he wants this drug prepared by Burroughs, Wellcome & Co. It may be in many cases that he wanted B something which Burroughs, Wellcome & Co. did not prepare at all. Nobody has succeeded in showing that there was anything in his mind except a desire to get Burroughs, Wellcome & Co.'s preparation of a particular drug.

My Lord, so much for those documents. There are 42,000,000 of C people, I believe, according to the last Census, in the United Kingdom, and I cannot conceive how in any trade in England you can fail to find, if search is diligent, a multitude of exceptions to any rule you choose to propound. You cannot prove the non existence of a rule by proving there are exceptions to it, and that is the task which my learned friend D has undertaken, and, I think, has not had very much success with. Considering the amount of trade, considering the fact that the public do not deal directly with Messrs. Burroughs, Wellcome & Co. at all, I am not at all surprised, and I do not think the Court will be surprised, that he can produce many instances of an improper E use of the word "tabloid." I say with regard to the action that is wholly immaterial, because it is conceded by the witnesses on both sides that no honest trader will deliver any goods but Burroughs & Wellcome's goods in response to an order for tabloids.

My Lord, my friend, Mr. Walter, put forward a proposition which is F one, in my humble opinion, of the many fallacious propositions that my learned friend has been put to, not because he is in the least inclined to adopt fallacious arguments if he can help it, but because of the exigencies of his case. He has told your Lordship that what the Court does is to protect the ultimate purchaser. I venture to think that is a total G misconception of the whole basis of the trade mark law, both before and after the Act. What the Court does is to protect the rights of the trader who has the mark, and I do not recollect any action by a member of the public against anybody for passing off, although, according to my learned friend, Mr. Walter's suggestion, he would be the only man who could H sustain the action. It is the trader's right to have a fair sale of his goods to the public by those in the trade, who know that the mark is his mark, and that the name is his name.

Mr. Justice BYRNE: A common action of deceit would be *prima facie* an action by the purchaser, would ~~not it~~, against the person I who sold? The passing-off action certainly far more often—almost invariably—is by the trader against a person who sells.

Mr. NEVILLE: My Lord, I did not wish to suggest that a member of the public could not bring an action.

Mr. Justice BYRNE: Take the meaning of the sale of the basalt

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stone, that was by the purchaser. There are plenty of cases in which it is not by reason of the infringement of the right of the trader, the person who originally sells the goods.

Mr. NEVILLE: Yes. All I meant was this, my Lord. I do not remember a single passing-off case in which the action has been brought by a member of the public for one reason, of course, that it is not worth their while. Fraud, of course, gives a right of action to anybody who is defrauded. I do not for a moment suggest that a purchaser could not bring an action. All I say is that to lay it down as a proposition that the protection means the protection of the public, and not the protection of the trader, is inconsistent with the whole run of the cases from the passing of the Act until now. I cannot remember a single case of passing-off in which a member of the public has been the Plaintiff; and there are no doubt many thousands of cases in which the trader has been protected in his rights by the Court. That I why I say, if the public did not know anything about "tabloid," as long as the trade knew that "tabloid" was solely referable to the goods of Burroughs, Wellcome & Co., they would not be entitled, without inquiry, to hand over other makers' goods in answer to a request for tabloids. With their knowledge they are bound to see the word is used in a proper sense, unless by their inquiries they are satisfied it is not used in a proper sense, and does not apply to Burroughs, Wellcome & Co.'s goods. So far from that being the case, we have no evidence, except what Mr. Abraham said, in any case that a chemist is so doubtful of the meaning attached by the public to the word "tabloid," that he thinks it worth his while to ask the customer what he means when he comes into the shop and asks for tabloids. I ask your Lordship to bear that in mind, because that seems to me of very great importance. With the exception of Mr. Abraham, all the Defendants' witnesses said exactly what my witnesses said there. They said: If anybody comes into the shop and asks for tabloids of a line listed by Burroughs, Wellcome & Co., I know what they mean, and give them Burroughs, Wellcome & Co.'s goods. If they come and ask for tabloids of a line not listed by Burroughs, Wellcome & Co., I have to make inquiry. I have to try to get them from Burroughs, Wellcome & Co., and make an exception to my ordinary course of dealing, but my ordinary course of dealing is not to ask what he means by "tabloid"; I know what he means. It is only when he uses it in a sense which I find cannot be the ordinary sense, because he is alluding to somebody else's medicine which Burroughs, Wellcome & Co. do not make up that I make any inquiry at all.

My Lord, just consider the bearing of evidence of that kind. It is this: We understand the public to mean the same thing by "tabloid" that we mean. We mean by "tabloid" Burroughs, Wellcome & Co.'s goods. We believe that they mean Burroughs, Wellcome & Co.'s goods, and when they are asking for anything that can be supplied by Burroughs, Wellcome & Co., we never investigate the matter further. We accept their meaning as identical with the meaning which we have in our own minds. And the evidence goes to this, that there are exceptional cases in which we find the public cannot attach the meaning to the word which

in the ordinary course of our business we assume that they do. I cannot think that there is any stronger evidence in support of my case than the evidence of all my chemists, and the admission of all but one of the Defendants' chemists to the effect that they ask no questions when tabloids A are asked for if they are listed by Burroughs, Wellcome & Co., but always supply Burroughs, Wellcome & Co.'s goods. That is as good as saying, "We know quite well that in the ordinary course the public mean what we mean by tabloids"; but they say and say perfectly truly, I daresay, "There are cases in which the public do not know what they B mean; they apply it to tablets, palatinoids, and a variety of articles to which it is not properly applicable, and therefore we say that the public as a whole have not the same universal knowledge of the meaning of tabloids that we attach to them." I submit to your Lordship that first of all in no case could that possibly be material because that would not in C the least justify a trader in saying: "Very well, then if people ask me for tabloids I shall assume that they do not know what they are talking about and I shall give them what I please." If that had been the case set up, that mistakes are sometimes made, and an improper use of the word is often made, it would be D no justification for people who know what the meaning of the term is, without proper inquiry, giving other goods in response to an order under the name of tabloids. But I venture once more and finally to submit to your Lordship that any conceivable difficulty on that point is cleared away by the evidence of the Defendants themselves if their witness E comes and says: "No, I admit that I could not without fraud serve goods of other makers to a customer who asked for tabloids, unless there was some collateral circumstances attaching to the order which made me perfectly satisfied, that although he used the word, he used it without the meaning attaching to it that I attach to it." That Bransby has said F positively, and therefore I submit we had no difficulty starting from Bransby's evidence, if we did nothing but put witnesses into the box who proved written and verbal orders for tabloids with or without the addition of B. W. & Co., and that they got the make of another manufacturer, and not Burroughs, Wellcome & Co.'s goods.

G Mr. Justice BYRNE: Of course I must decide this case on the evidence before me, but it is extremely difficult to throw out of one's mind what one knows one's self. I am trying to do it as much as I can, but I have been familiar with these things, these tabloids, for a long time, of course, and I cannot quite throw it out of my mind that until a H comparatively short time ago—I think about a year ago—I did not know that it was appropriated to these people at all. I was one of the ignorant members of the public. I was told by a doctor in the first instance, and the second case was brought to my attention by going into a chemist's shop and asking for "tabloids" of something, and he said, "We I do not keep them—they are Burroughs & Wellcome's; we have tablets." That is quite recently—since this advertisement. I suppose the utmost it comes to is that you will say I was one of the ignorant members of the public.

Mr. NEVILLE: In one sense your Lordship is one of the

Nov 27, 1903 42,000,000, and the evidence of one of the 42,000,000 does not carry you far.

Mr. Justice BYRNE: No, that is so; but that is one of the difficulties a judge has to meet in combining the functions of a jury and a judge. A

Mr. NEVILLE: Quite true.

Mr. Justice BYRNE: I shall disregard entirely personal matters in this.

Mr. NEVILLE: If your Lordship added yourself to the list of the Defendants' witnesses I could not raise any objection, if your Lordship B understands what I mean. That would be perfectly fair; but that does not carry the point.

Mr. Justice BYRNE: No, not the least.

Mr. NEVILLE: That was why I was insisting as forcibly as I could about no inquiry being made when tabloids were asked for, because your C Lordship sees how far-reaching an answer of a chemist is to that effect. He has so little reason to suppose that there is a general misunderstanding as to the matter that he does not make any inquiry.

Mr. Justice BYRNE: This also is brought out in your evidence. Your method of trading enables traders—I do not say it is unreasonable D at all—to sell these actual things under the name of tablets and under their own name; and you also have this, that if it is a chemist's prescription the actual consumer does not see the name at all either. They paste carefully over it very often and make it up as a prescription.

Mr. NEVILLE: I quite follow that, and I insist upon it. I say if E there is any confusion they have caused it, and they are the last people in the world who can take advantage of it. When it is said we sell in bulk, we do not sell without brand; we sell in large bottles with our name upon them. If anybody buys our goods they buy them out and out, and as long as they do not give other people's goods F for ours we cannot prevent them giving ours for other people's or their own—we cannot help it. Therefore the honest position to take up seems to be, "In order to do you as much harm as we could, or in order to do you good, we have adopted the practice of selling your goods, but under our own name." Therefore the public are accustomed to see bottles with G tablets on the outside which they are justified in supposing are tabloids, and the consequence is some of them have got into a state of confusion. They can see some—it is difficult to say what—classes of medicines are generally described as "tabloids." That is what it comes to. If that is far-reaching, chemists are not particularly fond of H selling proprietary articles; they make a much better profit by selling their own preparations than by selling proprietary medicines. You will recollect one eminent chemist protested against the system altogether. He said: "I hate it. I would do anything I possibly could to prevent it, but I cannot help it." Therefore, all their interest lies in diverting the I public mind from the habit of asking for proprietary medicines and in inducing the public to take something in lieu of the proprietary medicines. Several witnesses have said that, and we know it is what they call pushing their own line. That is, if a person comes

and says : " Do you keep 'hazeline'" (or whatever it may be), they say : " Yes, we have got it, but we have something a good deal better and cheaper, willyou take it instead ?" and very often a customer, if he has any confidence in his chemist, does take it on that recommendation. That is perfectly legitimate. They are not bound not to push their lines in competition with the lines of proprietary medicines. But the strength of my point seems to be this, that if the chemist had any real doubt as to what was meant in nine cases out of ten by an order from a customer for tabloids, having regard to the fact that it would pay them better to serve their own medicines, and very often pay them a great better to serve medicines, for instance, supplied by the Standard Tablet Company—if they had any real doubt about it—surely it would be worth their while to say 'tabloids,' what do you mean by tabloids, do you want any particular make ?" and if the man said : " Oh, no, I do not care who makes them, I only want a drug of a particular class," they might say : " You are making a mistake in the name ; you had better take this." But they are so little convinced of the truth of their story that the public use tabloids generally in a sense, irrespective of the maker, that it really is not worth their while to ask people what they mean when they come in and say : " We want tabloids," but they give them Burroughs, Wellcome & Co.'s, unless there is something in the order which leads them to suppose a mistake has been made ?

Mr. Justice BYRNE : Would you say as to the secondary meaning of " tabloid " as meaning a thing like that, a compressed drug of that shape—that unless it has become so established as to have ousted the other notion, they ought not to be entitled to act upon it ?

Mr. NEVILLE : I say certainly, that at least must be so, and I am not at all sure how far they are entitled to assume anything of the kind. Supposing a man says : " I know the true meaning of this word, but I believe, if you please, that the majority of people do not," he has no right to act upon that, because the 99th person may know it, and so long as he is getting an order under a name which bears a real meaning, he has no right to attribute a false meaning to it without inquiry. If he was really convinced of the truth of the story that he tells in the box, of course what he would do would be to say : " 'Tabloid' is meaningless to my mind. Do you want the goods of a particular maker, because that is what 'tabloid' means." Then if his view is true the customer would say : " Not at all ; any maker's will do for me ; I only want this particular drug in "—what my friend calls—" a tabloid form ; that is in a form similar to that which I have become accustomed to look upon as a tabloid." If he does not do that it really is a conclusive answer to the validity of his suggestion, with the exception of our friend Mr. Jones, who does not suggest that they always used " tabloids " in a wrong sense, the highest they ever put it, I think, was " as often as not." Then supposing a customer comes into your shop asking for tabloids, as often as not meaning Burroughs, Wellcome & Company's goods, can you serve another person's goods instead of them without inquiry ? So taking their own evidence, I submit it will not do. Finally, I may put it as a broad proposition, which

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I submit there can be no gainsaying, that in a trade where a name is known as the make of a particular trader, it is no defence to a delivery of goods of another maker in answer to an order for goods under one maker's name to say: "I thought very likely the person who asked for it did not mean to use the word with the same meaning that I attach to it, but in a more popular meaning which did not refer to the maker at all." The answer is this: "You knew what it was; you had no right to suppose your customer did not know; if you had any doubt it was open to you to ask him, and you had nothing to do but to ask him, and if he told you he meant the goods of any maker you might then honestly serve him with an equivalent article, and if you do not ask him and you want to serve an equivalent article (as you do) it is perfectly clear it is not worth your while, except when something occurs which leads you to suppose that he is using the word in the sense you do not attach to it."

My Lord, I have argued the case entirely upon the footing of trade name, but now I come to the question of trade mark, and, of course, if that is established it strengthens the position very much indeed. I say that the action must succeed equally with it or without it; but, of course, every argument I have used is much strengthened if you find that there is a legal trade mark upon the register throughout the whole of the time. It is said: "Oh, no. There could not be any infringement of trade mark."

Mr. Justice BYRNE: Wait one moment before you quite part with the other matter. There is the class of cases where it has been said that a trader may give a common name; that is to say, a word with signification or a common English word even, and may acquire a right to use that—as for instance with a name like the Glenfield Starch, or anything of that kind.

Mr. NEVILLE: The Camel Hair Belting case is the very best instance of the kind.

Mr. Justice BYRNE: Yes; that is the very best. When you get a case of that kind you must then show that it was known generally—not merely that people are dealing with it.

Mr. NEVILLE: Yes, you must, my Lord.

Mr. Justice BYRNE: It has come into my mind about the distinction between a case known to everybody who used the expression—to ordinary members of the public as well as dealers—and a case where the knowledge of such a monopoly is shown only with regard to the trade.

Mr. NEVILLE: I recollect my friend referring to Reddaway v. Banham, and to the other cases in which certain dicta have been made by the Judges—with which, of course, I neither can, nor wish to, quarrel in the least—but there are two fallacies about that. The first is a very simple one.

Mr. Justice BYRNE: I had to consider Lord Davey's remarks in the Fels-naptha case.

Mr. NEVILLE: Lord Davey made one remark which, I think, nobody has ever been able to give a meaning to since. Perhaps some day

he will tell us what he did mean by it. He said words which have been argued to mean that you cannot prove a secondary meaning to a word in a case where only one trader has been dealing in the goods under that name throughout.

A Mr. Justice BYRNE : I think, for himself, he says he could not see what the law was—that he would be taking too heavy a burden——

Mr. NEVILLE : He says it very much diminishes the weight of the testimony if you find only one trader has been dealing in it. When you come to think of it, under no conceivable circumstances other than that B can the question ever arise. If half a dozen people, or if two people, had been dealing with the article under that name it is inconceivable, if not impossible, that a secondary meaning can be attached to a word attributing it to a particular maker. It cannot be ; and therefore he gives the only instance in which the question cannot possibly arise, and he says, I think, C where that does arise it very much weakens the effect of the evidence.

Mr. Justice BYRNE : He is dealing with the evidence of a trader taking some well known word.

Mr. NEVILLE : I am going to that directly to show your Lordship what I conceive to be the difference there. But with regard to that one D passage in Lord Davey's Judgment, it does create a very great difficulty in one's mind, and some day no doubt he will explain precisely what he did mean by it. But—I say it with the deepest respect—it seems to me at present unintelligible, because he uses it with regard to a class of cases in which the condition referred to must exist or the question cannot possibly E arise. You can only get a secondary meaning to a word where a person has been so long the exclusive dealer in the goods that the name, originally a common name, has come to be used as a synonym for those goods. If there are two or three in the market under the same name it never can happen. If I start selling camel hair belting, and my friend F starts selling camel hair belting, and my friend gets a very much wider trade than I do, he cannot stop my sale of camel hair belting under that name, nor can he ever say in the market, " It means only my goods." The answer may be that a great many people only know you in the market, but others know there are two makers both selling under this name. G Therefore it is impossible for you to say that it is a word of common description applying to your goods and not to mine. Supposing half a dozen makers sell flannel trousers and one maker sells so many more flannel trousers than all the others that there is a general connection in the public mind between that maker's goods and the term " flannel H trousers," it would still be impossible to suggest that the use of that name " flannel trousers " was restricted to that one maker simply because a great many of the public were accustomed to buy them of him under the name of " flannel trousers." You must show that the conditions of your trade are such that the term has got the secondary meaning.

I There is a thing which I have turned over in my mind on a good many occasions, but I have never been able to find a satisfactory explanation in my own mind, and I have never heard of a satisfactory explanation occurring to anybody else's, but I may be wrong, and that there is some

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satisfactory explanation. I refer to the Judgment in the Fels-Naphtha case.

Mr. Justice BYRNE: There is no Judgment in the Fels-Naphtha case.

Mr. NEVILLE: Did not Lord Davey use the expression in the Fels-Naphtha case——

Mr. Justice BYRNE: No, that has not yet gone to the House of Lords.

Mr. NEVILLE; Then it was in the Cellular Clothing case that Lord Davey used the expression to which I refer when commenting upon Reddaway v. Banham. Let me just say this about these cases: It is, of course, always argued by those who desire to show the difficulty of attaching a secondary meaning to words that because certain remarks were made with respect to camel-hair belting and with respect to Cellular Clothing—in the Cellular Clothing case notably—that those remarks are equally applicable whatever the word may be: that is to say that what the Court held in the cellular clothing case, namely, that it is no more difficult to acquire a secondary meaning to a purely fanciful description—your Lordship sees what I mean—by a fanciful description I do not mean the use of a fancy word; but the fanciful description of a particular article as distinguished from its natural description.

This is not an illustration, but it is very hard sometimes to hit upon an illustration when you want it—supposing the flannel trouser maker had sold flannel trousers and called them "unmentionables," or "flannel unmentionables," it is obvious that it would be very much easier for those words to acquire a secondary meaning as distinctive of his goods than it would be if he had simply called them "flannel trousers."

In the Cellular Clothing case, in which these remarks appear, Lord Davey and the other Lords held that cellular clothing was the natural and proper description of the article. Lord Davey said: "I cannot conceive any other description. I do not know how I should describe it if I did not describe it in this way. It seems to me that the clothing being cellular, to call it cellular clothing is using the natural word to describe it, and I do not understand how you are going otherwise to describe it. So in the case of selling flannel trousers, it is almost incredible that flannel trousers could never get a distinctive meaning if called simply "flannel trousers." But, I think, if you say they are "unmentionables" or "flannel unmentionables," it is quite possible, though they are both words the meaning of which is appreciated by the ordinary members of the public. I think, my Lord, my "unmentionable" illustration will do for the want of a better—I think it indicates to your Lordship what I mean—that although you are using common words you may have a fanciful description of an article, that is to say, a description which nobody, unless it be suggested to them would ever think of using. Nobody—unless a man so advertised his trousers as "unmentionables"—would go into a shop and say, "I want some flannel unmentionables," but he would go and say, "I want some flannel trousers," because that would be his natural way of describing the article to the shopman, and it would be an unnatural and a

fanciful way of describing the article if you called them either "unmentionables," or, to take another expression that we have heard—"Impossible-to-run-about-without-ables." There you have English words of perfectly well known meaning, but nobody who was not a lunatic would go into a shop and ask for articles of that kind, and a man might very possibly by selling them under that description get a distinct reputation which otherwise he might not get, although he was using a purely descriptive epithet. That I understand to be the distinction between the two cases—a distinction which, of course, is always intentionally overlooked by those Counsel who have to argue at the particular moment that the remarks in the Cellular Clothing case are equally applicable to any descriptive term, whether it is a fanciful description or whether it is a natural description that anybody would use. I submit that there is a wide difference between the two cases, and that it is doing violence to the meaning of the House of Lords if you adopt their dicta with regard to the Cellular Clothing Company and apply it to a fanciful description.

But, my Lord, there is another point here which I noticed during my friend's argument, and which I am glad to have an opportunity of dealing with. His argument was a completely inverted argument upon the cases of Reddaway v. Banham and the Cellular Clothing Company's case. He said, where a word is descriptive in any way it is an exceedingly difficult thing to prove that the word has acquired the secondary meaning of A. B.'s goods, and, therefore, he said: "I say that tabloid is descriptive, and if you grant me that, then I say it must be very difficult for any firm to acquire a secondary meaning to that word, and I say that you cannot prove a secondary meaning attached to a word unless you prove that the meaning attached to it is universal." First of all, he is wrong, as I shall show your Lordship; and, secondly, he has inverted his facts in order to apply the argument. Here there is no question of what "tabloid" meant. "Tabloid" never had any meaning except the Plaintiffs' goods. What he has got to prove, at all events, to help his case at all, is that "tabloid" has acquired a secondary meaning, so that that which was once distinctive of the Plaintiffs' goods has ceased to be distinctive of the Plaintiffs' goods any longer, and has become a word of common user; and that is his argument. Only, when he comes to deal with the cases, he inverts it and says: "Oh, you have got to give evidence sufficient to show that this word has acquired a second meaning, and you cannot do that because it must be universally a second meaning, and I show you there are people who use it in what he calls the descriptive sense and not in the distinctive sense." That is a pure inversion. The real question here, if it is a question at all, is not what did the original word mean—we know that—but has the word by user acquired a secondary meaning; and the very arguments that he uses against me recoil upon him, because if he is right he has got to show that this word has acquired a secondary meaning and is now generally descriptive of a wide class of drugs, whoever the maker may be, so that he must prove that with all the strictness and all the severity which he suggests has to be adopted where we try to put a secondary signification to a word. He is putting the saddle upon the wrong horse. In order to make out his

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case he has got to prove a secondary meaning, but he suggests that I have got to prove the secondary meaning. Not at all. My meaning was the same from the first, unless it has been lost.

Mr. Justice BYRNE : Of course, he started from a different position. He started from the position that "tabloid" is an English word as it were, and that it meant something independently of you. Starting from that, then he says that in order for you to succeed on the passing-off part of the case you must establish a secondary meaning. That is, I think, the way he puts it.

Mr. NEVILLE : Yes, my Lord ; but then, of course, he cannot say it is an English word, because there the evidence is dead against it—it is useless. You must have a basis of fact to put it on. He cannot say that "tabloids" is an English word. What he can say—whether successfully or not—is this : he can say it is descriptive, because you can find out what was in the inventor's mind.

Mr. Justice BYRNE : And is therefore registrable.

Mr. NEVILLE : And is therefore registrable, which is a very different thing. But I say that "tabloid" was not an English word, and it was distinctive of the Plaintiffs' goods in its inception. He says it is so no longer. Very well, in order to prove that he must prove that he has acquired a secondary meaning, and he is just in the difficulty which turned round the other way, the people were in when they tried to prove, or would have been if they had tried to prove that "flannel trousers" had acquired a distinctive meaning. This was originally distinctive, now he says it is generic. In the other case it was originally generic, and now you have to say it is distinctive. The burden is in either case on the person who has to prove the complete reversal or alteration of the ordinary meaning of the word. But my learned friend is not right even in his proposition that it must be universal use. There I am going to help him a little. If it was in *pari materia* he would have stated the case too much against himself. Take the case of "Silverpan" That is a recent case in which some jam makers had adopted a plan, which was rare in the trade at the time they adopted it, of boiling their jams in silver pans—what they called silver pans ; they were silvered pans. They were not the only people who did it, but they were the people who made the most fuss about it and relied on it more in their advertisements. They had a widely known business in the north of England—they were Messrs. Faulder & Co., Limited—and they ultimately sued a firm of O. & G. Rushton for passing off their goods as "Silverpan" goods.

Mr. Justice BYRNE : There was no question of registration there.

Mr. NEVILLE : There was no question of registration there. Indeed the trade mark had been removed from the register on the technical ground of want of disclaimer ; so the action had to be decided on the question whether "silverpan" meant the Plaintiffs' goods. It is only incidentally that this is important, but I should like to refer your Lordship to what is said by the Court of Appeal there, which clearly shows that where you have a description like "silverpan," that is to say a description which is really descriptive, and descriptive in ordinary English

words, but is a purely fanciful description, because it is not the natural way to describe jam to call it silverpan jam, and consequently a trader might readily obtain a reputation for "silverpan jam," and silverpan might become distinctive. In this case they were just in the position we should be in if the Defendants succeeded in removing the marks from the register, because they had had the mark on the register till shortly before the litigation commenced, then they had it removed.

Mr. Justice BYRNE: Where is that case?

Mr. NEVILLE: I do not think it has got into the regular reports yet, except the Patent Reports. It is in the 20th volume of the Patent Reports, page 477. Lord Justice Vaughan Williams says this with regard to it at page 492: "This action here was very properly described by Mr. Moulton as a passing-off action. It is an action in which an injunction is claimed, and there are certain allegations of things actually done by the Defendants, and then the Statement of Claim goes on to allege threats of the continuance of this course, and to claim an injunction to restrain the Defendants from thus doing. I think the action had nothing to do with the enforcing of statutory trade mark rights. I quite agree with Mr. Moulton that it is necessary that the Plaintiffs should identify this word 'silverpan' with their firm Faulders. It is quite plain that it is necessary from the decision in Reddaway v. Banham, and I agree with him further that it is not only necessary that there should be proof of the identification of this word 'silverpan' with the Plaintiff's firm, but it is necessary to show that that identification is recognised within the district in which the Defendants, whose user of the word is complained of carry on business. But this does not mean that there must be proof that the word 'silverpan' is recognised by every one in the district. In my judgment it is sufficient if there is, as there seems to be in this case, a user in the district of the name of 'silverpan' exclusively in connection with the Plaintiffs' firm coupled with a large user of the word 'silverpan' exclusively by Faulders throughout a large portion of Lancashire, and especially that portion of Lancashire which is immediately contiguous to the Wigan district." Then Lord Justice Romer, I think, says something very much to the same effect. He says on page 494: "Further, it is true, as is said on behalf of the Defendants that in Wigan itself the number of customers established by evidence before the Court who have used, and been acquainted with the Plaintiffs' jams, is not large; that the amount of the Plaintiffs' trade there, as proved, is small. But looking at the circumstances of the case, and how the Plaintiffs' goods have been advertised in Wigan and the neighbourhood, I cannot come to the conclusion that the customers who know the Plaintiffs' goods under the term 'Silverpan' are so few that they ought to be disregarded in considering the question I am now dealing with"—that is to say, passing-off. We all know nowadays at all events it is a pure question of fact. The only principle underlying it is that you cannot pass off your goods as another man's goods, consequently the evidence you have to give to the Court is to satisfy it that by selling under the particular name a trader would be passing off his goods as the goods of another trader. Directly you prove that, whether you

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prove it with regard to part of England, or whether you prove it with regard to the whole of England, or whether you prove it in the case of all members of the public, or whether you prove it in the case of a substantial number, the underlying principle compels you to the same conclusion as soon as it is shown that there is enough recognition of the user of the mark to lead to the conclusion that if another trader uses the mark he will be passing off his goods to people who use a term which is distinctive of another maker's goods. Supposing the evidence stood precisely as it does at this moment, and that we had never registered our trade mark at all, we should then have it that "tabloid" was well known throughout the whole of the trade as meaning the Plaintiffs' goods, we should have it even on the Defendants' evidence that at least as many of the public use it as meaning the Plaintiffs' goods as use it in any other sense. Then you would have to consider whether, under those circumstances, a man who knew that "tabloid" meant the Plaintiffs' goods was justified in substituting other manufacturers' goods in response to an order for "tabloids." I submit when it is put in that way, and I venture to suggest that is the real issue you have to try in the present case, it seems to me that the difficulty in the case disappears. Of course, there is always a difficulty in ascertaining what the meaning of a particular word may be in everybody's mind ; and when you talk, as they did in the case of Reddaway v. Banham, of universal knowledge, of course, really in the sense which Counsel attempt to attribute to it in their argument, such an idea is absolutely absurd—there was no general knowledge that camel hair belting meant the make of Reddaway —nothing of the kind. There was only a general knowledge amongst those people engaged in the trade, although Reddaway v. Banham went further than any case went before, and, I think, probably further than any case would ever go again.

Mr. Justice BYRNE : There there was the finding of a Jury.

Mr. NEVILLE : I should think it would be very seldom that a Jury would come to such a conclusion. The Court simply gave effect to the finding of the Jury. They said it is a question of fact ; they are entitled to find it is possible, and it is for them to consider whether it would happen. Having regard to that circumstance, when you take each individual instance used by the House of Lords in that case and in the Cellular Clothing case, and apply it generally to all kinds of cases, you are perverting the meaning of th words by dissociating them from their context and from the matter which was under the notice of the Court at the time when the words were used, but I think now there can be no doubt that we have got on to a perfectly wholesome and plain platform, that it is a question of fact, and therefore each case must depend entirely on its own circumstances, and here, I submit, you have a case in which the ordinary difficulty, if it is not entirely removed, is minimised to an unusual extent, because you have the two facts ; first of all that this word started as applicable only to the Plaintiffs' goods, that throughout the trade it has maintained that reputation, and that the members of the trade itself recognize, and swore in the box, that no honest trader can

substitute the goods of other makers in answer to an order for 'tabloids' unless there is something to show that the Plaintiffs' goods could not possibly have been intended. I submit, in a case like that, you are relieved from the ordinary difficulty, in cases of this kind, which does arise as to how far there has been an identification of the name with the Plaintiffs' goods. Here that is admitted, and they said we all know it; but the public do not all know it." That, I submit, is no answer whatever to an action against them for substituting other makers' for our goods.

Now, my Lord, one other point, and then I shall have done with that. It was stated by my learned friend that there was no evidence offered by us at all of the identification of the name with the Plaintiffs' goods by the public. That, I think, is a statement that cannot be substantiated, and I have picked out a few passages from the bulky evidence of our witnesses in which this point is particularly dealt with. The first I will refer to is Mr. Druce, who is a pharmaceutical chemist at High Street, Oxford, and he was a man, as your Lordship recollects, in a large way of business in a good position; he was ex-Mayor of Oxford, and he was on a good many boards of scientific institutions, and he says at Question 1597: "Do you remember any mistake in the public use"—in the public use, your Lordship will notice—"of the word 'tabloid,' including other than Messrs. Burroughs, Wellcome & Co.'s?" And he said: "No, I have heard of a confusion between 'soloid' and 'tabloid.'" Two products. "Q. But they are both Burroughs, Wellcome & Co.'s preparations?—They are both Burroughs, Wellcome & Co.'s preparations." And on page 128, Question 1631, in the cross-examination of the same witness he is asked: "Do the public know the shape?—Oh, yes, the public would know. When they ask for a tabloid they expect to get it. Q. But what sort of article do they expect to get?" Then he goes on: "That is your view of the public knowledge."

Now, my Lord, the next passage is on page 137, at Question 1816. This is Mr. Peet. He is a Liverpool chemist, 97, Mount Pleasant. He is a magistrate and a member of the Pharmaceutical Society, and he has had 25 years' experience, and he knows all about tabloids, and who introduced them, and so forth. Then in cross-examination he is asked at page 137, Question 1816: Does not the public generally understand tabloid as meaning nothing else than little compressed ~~cublets~~ tablets?—Oh, dear no, the public are far too wide awake for that. Q. You think the public are?—Yes, they know there are too many imitations put on the market. Q. You think the public generally knows all about it?—I think they know that." Then, 1823 and 1824, this is in re-examination: Q. You told my learned friend you thought now that tabloid was a household word?—I do think so. Q. In what sense is it used in the household according to your view?—As representing the products of Burroughs, Wellcome & Co." Then on page 140, Question 1881. This is Mr. Harry Wilson, a member of the firm of Randall & Son, High Street, Southampton, quite another part of the country: "Q. Can you tell me what the public mean by tabloids?—

Nov. 27, 1903 — They mean the compressed drugs of Burroughs, Wellcome & Co." Then comes Mr. Atkins from Salisbury, a Justice of the Peace, a former mayor of Salisbury, a pharmaceutical chemist, retired from business and who has been 50 years in the trade.

Mr. Justice BYRNE: Mr. Harry Wilson in cross-examination mentioned one particular detail which he explains. "Q. Do you come into contact with the public yourself in the shops?—Occasionally. Q. Only occasionally?—Yes. Q. Not much of recent years, I suppose?—Rather more of recent years than formerly. Q. Do the public come in and order tabloids?—Yes, they come in and order tabloids. Q. And have you ever been asked for tabloids of goods other than Burroughs, Wellcome & Co.'s?—Yes, on one occasion."

Mr. NEVILLE: And that was a special preparation of quinine. That, my Lord, does not bear out his answer, because what really happened there was that somebody asked for "tabloid of quinine," which they had not in stock, and they communicated with Burroughs, Wellcome & Co. Then he says: "We found the prescription had formerly been made up in Sloane Square, London, and we concluded that they had also communicated with Burroughs, Wellcome & Co. We did also, and we got them. They were made specially, I believe." So that what that it was an instance of was of an order given for tabloids of a drug not listed by Burroughs, Wellcome & Co.; but so far from thinking Burroughs, Wellcome & Co.'s goods were not intended, he goes to the trouble of getting Burroughs, Wellcome to make up the article specially. Then there is Mr. Atkins.

Mr. Justice BYRNE: On page 143, at Question 1934.

Mr. NEVILLE: Yes. He is the Mayor of Salisbury, and he says this: "Q. Have you anything to lead you to suppose that they attribute a different meaning to the meaning you attribute. Do you follow my question?—I think I understand it. I am not aware of any. Q. When you get orders or used to get orders for tabloids——?—You understand I have retired from business. Q. Yes. That is why I altered the form of my question. When you used to get orders for tabloids you used to supply Burroughs, Wellcome & Co.'s?—Always. Q. Did you believe the customer ordering tabloids meant the make of Burroughs, Wellcome & Co.?—I thought so. Q. Do you remember any instance in your business of the word 'tabloid' being used in a sense different to the production of Burroughs, Wellcome & Co.?—I do not remember any." That is a retailer who deals with the public.

Mr. Justice BYRNE: Then at Question 1961.

Mr. NEVILLE: Yes. Q. "Can you tell my Lord what meaning does the word 'tabloid' convey to the public as far as you know?—Exactly the same meaning as it has with the trade; they meant, I believe, Burroughs & Wellcome's preparations. Q. Did you ever see the prescriptions?—Yes. Q. What is the practice as far as you know, about doctors putting on B. W. & Co. below the 'tabloid'?—Very varied. In many cases they use the word 'tabloid only; sometimes they add the additional 'B. W.' the same as they might add the initials of any other firm to any of their preparations. Q. When you get a prescription with

'tabloid' alone, what do you supply?—My conscience would not permit me to supply anything but Burroughs & Wellcome's preparations."

Mr. Justice BYRNE: One is asked for "tabloids" which were not theirs—hæmoglobin. It is "goblin" here, but it is "hæmoglobin." That was in a prescription, was it not?

Mr. NEVILLE: Yes. The next question I have, but I do not pretend to have got them all, is at page 165. It is Mr. Waring, who was a London chemist at Bucklersbury, London. He says at Question 2392: "So far as your experience goes, does the public know the meaning of 'tabloid' and associate it with Burroughs & Wellcome?—The majority do, I believe. Q. You believe the majority do?—I believe the majority do. Q. Have you many cases in which they ask for 'tabloid' when they mean some other maker's?—No. Q. Have you never heard 'tabloid' used in connection with another makers' goods besides Burroughs & Wellcome's in the trade?—Never" So that he says the majority do. Then at Question 2398 he is asked: "You do not think that 'tabloid' has anything in the mind of the pubiic to do with shape at all?—A 'tabloid'—no, nothing to do with shape. Q. Not in the mind of the public at all?—It is a compressed drug made by Burroughs & Wellcome. Q. In the mind of the public they are always associated with Burroughs & Wellcome?—I cannot speak on behalf of the public; I can only speak of my own experience. The public come in and ask for a 'tabloid,' and are supplied with Burroughs & Wellcome's. Q. That is all you can say?—What more do you want me to say? Q. Have you ever been asked for 'tabloids' that Burroughs & Wellcome do not sell?—No. Q. You never have?—No." He does not sell homœopathic medicines. My friend reminds me that at Question 2412 he says he was manager at Corbyn's for 15 years.

Mr. Justice BYRNE: Then Mr. Rogers also.

Mr. NEVILLE: That is on page 257, at Question 2433: "Do you actually see the public in the shop?—Yes. Q. Do they ever come for a tabloid?—Yes. Q. What do the public want when they come for a tabloid?—I believe they want a preparation made by Burroughs, Wellcome & Co. Q. What do they get in your shop?—Certainly that." Then on page 176 there is an instance amongst the photographic witnesses at Question 2599: "With regard to your customers, do they come and ask you for tabloid products—'tabloids'?—Yes. Q. What do you give them?—The preparations of Burroughs, Wellcome & Co. Q. As far as you can judge, is that what they want?—That is what they want, undoubtedly." Then there is Dr. Allen, at page 195 at Question 2880. He practises at Brighton, and is a general practitioner. He is asked: "Q. Of course you are in constant connection with the public; you see a great many people in the course of your rounds. Have you any reason to believe that 'tabloid' conveys a different impression to their mind than what it does to yours?—No. Q. As far as you know, is that the meaning generally attributed to 'tabloids'?—Absolutely so. Q. What is the meaning it conveys to your mind?—'Tabloids.'" I do not think that carries it any further. Then on page 206, Question 3082,

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there is this : " Tell me what do the public mean when they talk about tabloids ? (Mr. Walter) : How can he say that ? " It hardly lies in his mouth to say it. The answer is : " They mean Burroughs & Wellcome's without any doubt, as far as my experience goes." He is a pharmaceutical chemist at Palmerston Road, Southsea. I do not believe that is anything like exhaustive.

Mr. Justice BYRNE : What it comes to, and it applies to both sides, is, that so far as they have communicated with the public, they have no reason to suppose that the public meant other than what they meant by it.

Mr. NEVILLE : It cannot mean more than that, of course. Then you have to put with that the pharmaceutical chemists who gainsay it, and who never themselves ask the public what they mean when they ask for tabloids, but supply them with Burroughs & Wellcome's goods. When you get that accumulative testimony, you do get a very strong case of what the generality of the public mean, and you do not seriously affect the stability of that case by proving a thousand exceptions. Of course, in a case like this you cannot call all the 42 millions who are capable of speech and know the nature of an oath, to prove what is really common knowledge. It may be that this is not common knowledge. I do not suggest that it is, because the public are not bound and are not supposed to know the ins and outs of a particular trade. I should imagine that there is hardly any trade, however well known, which you could not produce any number of witnesses to say that they had never associated with the name of any particular maker whatever. That, I submit, is only really beside the question. If my friend were to succeed on the passing-off case it must be upon showing that " tabloid " had acquired such a secondary meaning, that it never meant, or never in any substantial number of cases meant, the Plaintiffs' goods at all, but was always used as a generic term. I put it so high as this : That it would be difficult to prove that 90 per cent. of the public used it as a generic term, having regard to the fact that the remainder of the public used it in a general sense.

My learned friend, Mr. Sebastian, has given me some evidence in which it does go a little further. It is in the evidence of one of the witnesses I have quoted from, but I did not give your Lordship the particular passage. It is Mr. ~~Grimes~~ Bruce the ex-Mayor of Oxford. In examination-in-chief on page 126 there is this : " Q. It is suggested that the public understanding of the word is different from the meaning that you have given to us. Have you any reason to suppose so, or do you find that the public use the word ' tabloid ' in a sense in which you have used it ?—I think they use it quite as I have used it. Of course there is a large number of these preparations, and sometimes for dispensing purposes we have larger bottles than the ordinary ones, and occasionally it may happen that a customer wants his shilling bottle of a certain drug and we have not it in that form. I say : ' We have got them loose ; I can give it you in one of our bottles.' He says : ' But are they Burroughs, Wellcome & Co.'s ? ' and I have to show they have come from Burroughs, Wellcome & Co.'s package." So that that does carry it a little bit further. That is

to say, he finds an inquiry for the particular maker used with the word "tabloid." That is what that amounts to.

My Lord, I think that concludes what I have to say with regard to the action, subject to this: that is, as to infringement. If I am right on the other part of the case it is not a matter of great importance. Still, I cannot pass over what my friend has said about it, because with the greatest respect I submit the argument which he has submitted is not sound. He says: "Granting you knew everything; granting you have the trade mark, and granting your case is alleged infringement, it is not a trade mark at all. As far as trade mark is concerned, no wrong is done to the legal right in the trade mark if in response to a verbal or written order for the goods under the name of the trade mark he gets other manufacturers' goods, unless the mark is stamped or printed on the goods themselves, because that is the only user as a trade mark." And, my Lord, he there adopts for general use, the rule applied in a particular case of quite a different nature. There is a use of a trade mark which is essential to justify the registration of a mark as an old trade mark before 1875, and on the question of what amounts to a use of the trade mark for that purpose, there have been a good many decisions where great strictness has been imposed, and it has been held that you must use them in the strictest sense, as a trade mark stamped upon the goods or stamped upon the envelope of the goods, and that you must use them as nothing else; it must be used alone, so that if you add the name of the firm, or add other marks to them you have not used that as a trade mark, and cannot use it as an old trade mark before 1875. But, my Lord, that has nothing to do with infringement before. That is an interpretation placed upon a particular part of the section in an Act of Parliament which tends to derogate from the rights of the general public, and is consequently construed with strictness. But it is a totally different thing to consider what it is which another trader must not do with regard to a trade mark owned by a rival trader, and I submit he infringes the trade mark if he sells the goods under the name which the trade mark bears. But further than that, supposing that you have in this case a written order bearing the trade mark upon it, and that that order is fulfilled by the substitution of the goods of another maker for the goods of the owner of the trade mark, delivered not, it is true, precisely as an invoice, but delivered in this way, with the prescription which purports to have been carried out, made up in the terms ordered, bears the stamp of the firm making it up upon it and is delivered back to show this is what we are handing you, made up as a prescription: surely there cannot be any doubt that that is an infringement of the trade mark. They are selling the goods actually under the mark used by the rival trader, and in many cases your Lordship will recollect it has been held that the use on letter paper, the use on bills, the use on posters, of a trade mark will be restrained by the Court as an improper use, although the work is not used on the goods at all, and although in none of those cases would the user entitle the trader to register as an old mark. You could not register as an old mark, because you had had bills and posters

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and show cards with the mark upon them: it would not help a bit towards helping you to register under that as an old mark. But you would be restrained from using another man's mark in that way, because the questions import totally different considerations and are decided upon a totally different footing. The Court does not lay itself out to find an easy way by which one man may infringe the rights of another. The Court is very careful of the rights of the public, and not to give one man a monopoly to which he is not strictly entitled, and, therefore, it is very careful in considering what the user of an old mark has been. But when it comes to the question of infringing a right granted by the Legislature in favour of a particular trader—

Mr. Justice BYRNE: What is the right groud?

Mr. NEVILLE: The restriction of the use of the trade mark under the 76th Section of the Act of 1883: "The registration of a personas proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act."

Now, my Lord, let us consider for a moment what the Act did. Trade marks, of course, were known before there was any legislative authority for them at all. They were recognised by the Court of Chancery a very long time ago, and the only alteration made, as I understand it (and so, I think, Lord Halsbury says in the Cellular Clothing case) by the Act of Parliament was to, in certain cases, substitute registration for user. You could not, of course, maintain your action on a trade mark before the Act unless you had shown such user of it as to entitle you to the exclusive right to the use of the particular name or trade mark. But the Trade Mark Act substituted registration for user, so that if you came within the definition of those marks you could have a mark which, if you never used it at all, you could put on the register with a view to future use. The moment it was on the register you would be in the same position as if you had used it for months or years and got a trade reputation. That was the distinction that was made, plus this, that with regard to a trade mark proper you could not sue unless you had registered. Those were the two alterations that were made by the Act. But it was never intended, as I submit to your Lordship, to derogate from the rights of the owner of the trade mark and to render it more difficult for him to pursue his remedies against an infringer than it had been before.

Mr. Justice BYRNE: But that remedy still was left, because in the cases where he could sue before the Act he could still sue, because it would be passing off then.

Mr. NEVILLE: Yes, but in the case of a trade mark he had surely just the same right after the passing of the Act with regard to a registered mark as he had before the Act with regard to a mark that he had gained by user. There was no distinction in the extent of his right. In either case you can have passing off, it is quite true.

Mr. Justice BYRNE: Is there any case where on trade mark alone

an injunction has ever been granted except by the use of the mark ? That is to say of course I can understand it need not necessarily be a reproduction of the mark on goods or wrappers, but somehow or other by letters. I can understand letters, and I can understand references to it in advertisements in a colourable way.

Mr. NEVILLE : Of course that is not the use of a mark as a trade mark, but I submit that the sending back of an order with your stamp upon it indicating that you have filled it is sufficient.

Mr. Justice BYRNE : That is just what I was trying to follow.

Mr. NEVILLE : My Lord, the only case I can tell your Lordship about is the Kodak case. In that case, before Mr. Justice Swinfen Eady, I appeared for the alleged infringers, and I successfully argued that there was no proof of infringement, because there had been no user of the mark, there had simply been the supply of articles, if I may use the word, under the trade mark, that is to say, that the written order had been given using the trade mark, and in response to that order certain goods were supplied. In that case, my Lord, the matter is not specifically dealt with, but there the action was for infringement of the trade mark.

Mr. Justice BYRNE : What is the reference ?

Mr. NEVILLE : It is in the 20th volume of the Patent Cases—the current volume—page 337. Mr. Justice Swinfen Eady does not deal with it except in the course of the argument, but according to my recollection he distinctly refused to accept my argument that there had been no infringement there in substitution of goods where the trade mark had been used in the order, and he finally made the order prayed for, which was an order for an injunction restraining the infringement of the mark. He says in the Judgment : " There must therefore be an injunction as asked, unless the applicants can succeed on their motion to rectify." So your Lordship sees that shows that he was giving the Judgment on infringement, otherwise the rectification of the register would not affect the matter. That is page 349. My friend reminds me—I do not think it makes much difference—that in their cases there were invoices, that is to say, they invoiced back the goods to us, repeating the order, but, of course, that was not used as a trade mark. Now here we have—and that is the only distinction I can see between the two cases—the sending of the goods with the prescription stamped with the mark of the firm, making it up upon it. That is the true distinction between the two.

Mr. Justice BYRNE : I do not see any reference to it at all in the Judgment.

Mr. NEVILLE : No, my Lord, it is not in the Judgment, it was in the course of the argument. There is no doubt it was discussed by one of a very numerous party of Counsel who appeared against me, and he confirms what I say about it. Of course, my Lord, under the old cases, your Lordship recollects that, from Seixo and Provisendi on, it was always held that where under a trade mark your goods had acquired the name of the mark, you were just as readily restrained from using the name as you

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were from using the mark, but whether it was ever put precisely on the ground of infringement I do not say.

Mr. Justice BYRNE: The form of order will prevent you using the word "seixo" or passing off without using the goods of the Plaintiff.

Mr. NEVILLE: That is in the case where you have not got an exclusive right to the name, but where you have got an exclusive right to the name you cannot distinguish. For instance, my Lord, take the case that occurs to my mind, the Red Star brand. There was a brand which was in the form of a star, and under which the goods had acquired the name of the Red Star brand. My friend will supply your Lordship with the reference to the case.

Mr. Justice BYRNE: You say the sending back of a prescription with the goods mentioned by a name which was the same as the trade mark is such a user.

Mr. NEVILLE: Yes. I say it is supplying the goods under the mark. It does not matter whether you put it on yourself or accept the placing of it by somebody else. It is not here closely analogous to the Red Star case, because there you had the star on the register and you got the name from a star. Here, of course, the trade mark itself is used; "tabloid" is the trade mark, and directly you get "tabloid" in the order you get the adoption of that mark by the vendor who under that name supplies you with the goods.

Mr. Justice BYRNE: The label on the goods is "tablets."

Mr. NEVILLE: That is quite true. It is not a matter of supreme importance here.

Mr. Justice BYRNE: That is why the case has not been much discussed on this particular point in any of the cases. If you have enough to establish that, you have enough to establish your right to it.

Mr. NEVILLE: Yes, it does not really matter, but I thought I ought to mention it because something had been said about it by my learned friend, but I submit our rights in the action are totally independent of that.

Mr. Justice BYRNE: I led you off the trial.

Mr. NEVILLE: Not at all, my Lord. My friend has given me a case which bears upon the point that was discussed as to whether it was the right of the public or the right of the trade—Webster v. Webster, in 3 Swanston, page 490, in the note to Alder & Fouracre, which is being reported there, and the side note of the bottom is this: "Injunction to restrain surviving partners from using the name of a deceased partner in the firm of the trade; refused. Mitford moved on the part of the Plaintiff, John Webster, an executor of James Webster, for an Injunction to restrain the Defendants, David Webster and James Wedderburn, the two other executors of James Webster, from using the name of the testator in the trade carried on by them in partnership The ground upon which this motion was made was that the Defendants used the name of the testator in the trade for the purpose of subjecting his estate to the consequence of the trade under a pretended agreement made by the testator in his life time. (Lord Chancellor): It is impossible that using the testator's name in the trade can subject his name to the

trade debts. (Mitford) : If it has not that effect it must be a fraud upon the public. (Lord Chancellor) : The fraud upon the public is no ground for the Plaintiffs coming into this Court. Motion refused." And in the case of the Leather Cloth Company against the American Leather Cloth Company, a case which is so well known——

Mr. Justice BYRNE : I never meant to suggest any doubt upon any such proposition as that at all. I thought you were putting the proposition rather too largely. I thought you were rather excluding the right of the customer.

Mr. NEVILLE : I did not mean to do that.

Mr. Justice BYRNE : In my view it may be an action by either. It is not material to consider whether the old action could have been by a member of the public. It undoubtedly could have been, and it could have been by the vendor. It does not matter, because you have the form of action, which does it. Each has his own remedy. Because you get damages for what has been done, supposing you succeed in this case, that is no reason why he should not bring his action for damages if he thought it worth while, and could prove it.

Mr. NEVILLE : One likes to be right in these cases. I submit to your Lordship the true distinction between the cases is this : A member of the public cannot sue except in an action for deceit, as he must base his relief on fraud. The trader need not ; but in Reddaway v. Banham it was supposed for some time that that case was based on fraud and when you come to the Cellular Clothing case, they said fraud has nothing to do with it. The question is, are you satisfied that for your goods goods of another trader have been passed off ? I know of no case in which apart from fraud a member of the public can sue. If there is fraud and he is injured by it he can sue.

Mr. Justice BYRNE : Yes, that is rather the sense in which I meant to put it.

Mr. NEVILLE : Now, my Lord, we come to a matter which is, of course, a very important matter, that is whether we are entitled to retain our mark upon the register. The issue, as I submit to your Lordship, is in its statement a simple one. If I may I will state it, as I believe the old issues used to state it when they were referred to the decision of a jury. Here the Plaintiff asserts and the Defendant denies that on the 14th March, 1884, "tabloid" was a fancy word not in common use. My friend says and it may be so—(I will not say it is not, I am not quite sure) —that it must be a distinctive fancy word, not in common use. The section, of course, is open to that construction. I do not think that really makes any difference, because a fancy word not in common use is clearly distinctive. Am I right in saying that that is a genuine issue of fact to be decided by Judge or Jury before whom it is brought upon the evidence ? I think I can show your Lordship in Lord Lindley's words that that is so, and if that is so, then it is perfectly clear that a reference to a long list of cases in which some words have been held to be fancy words and other words held to be not fancy words, is not and ought not to be of any material assistance to the Court whatever.

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My Lord, in citing the cases I am going to cite, I am not going to ask your Lordship to hold that it is a fancy word not in common use because the Court held "Bovril" was a fancy word not in common use. I am not going to ask your Lordship to hold that it is a fancy word; nor that this is an invented word because "Solio" was held to be an invented word. I am going to ask your Lordship to take your mind back to the 14th March, 1884, and then say with a mind untrammelled by decisions on particular cases whether a Judge or Jury, whether, in your opinion, upon the evidence as it now stands this was a fancy word not in common use; and if you come to the conclusion that it was, it seems to me perfectly idle for my learned friend to say: "You must not decide this is a fancy word not in common use, because some other Judge held that such and such another word was not a fancy word in common use." It is, as we all know, a line of argument which for, I suppose, some hundreds of years has been adopted in a particular branch of this Court; but however often it is repeated, it is not justifiable. When you have once come to the conclusion that you have to decide a question of fact, you are bound to decide it, as I submit, upon the facts of the particular case, and the Court is really not assisted but hampered in its work by an attempt to imagine what conclusion you would have come to under a different set of circumstances with regard to a different word. That the Jury would be left entirely without direction I do not suggest. Nor do I in the least object to my learned friend suggesting methods in which your Lordship might direct your own mind. I think that is fair enough. For instance, I think he might say—and I think he has the authority of the House of Lords for saying—it is not every word which has never been used in a particular form before which can be claimed as an invented word. I think he is entitled to say "cheap-and-good," for instance, although as one word it has never been a member of the English language, is no invented word which can be used for the purposes of trade. To take another illustration, I think he could say "waterproof," although up to a certain time probably was never used as one word but as two words, and you have "wind proof" and "weather proof" and "waterproof," you may not take those two words and join them together and plead them as the name of a particular article constructed to keep out water. Lord Herschell said, "I do not think you can call that an invented word," and, if I may respectfully say so, I do not think you could. Also I think a Jury might be directed that a mere colourable alteration of an existing word in the English language, leaving the meaning unaltered, would not be an invented word or a fancy word. And I think they might be told that the mere misspelling of a word, leaving it with the same sound, although in truth you may say it is not a word in the English language so misspelt, still it is only a colourable imitation of a word in the English language so misspelt, and is not an invented word. I think one might go further according to what has been said in the House of Lords, and say that because you are using a foreign word you are not using a fancy word not in common use. Supposing your Lordship had a

Jury before you, when you had so far instructed the Jury, I think your Lordship would be bound to leave the question to them on that basis, and I do not think you would be properly directing the Jury if you took them through a multitude of decisions of other Juries and said, "I think I ought to tell you that in a certain case under certain circumstances a Jury held that 'Somatose' was not a fancy word, and I think I ought to tell you that in another case under fresh circumstances a Jury held 'Electroid' was not a fancy word." I think by so doing, if you had a Jury here, your Lordship would be interfering, if I may say so, with their proper functions, and disabling them from properly performing the task which they had before them instead of assisting them.

Mr. Justice BYRNE: Where is the Melrose case, because in Van Duzer's case, Lord Justice Lopes treats it in exactly the same way as you do? I should like to see what he treats as the question. I am wrong.

Mr. WALTER: It is not the Melrose case.

Mr. NEVILLE: I think Lord Lindley's statement is in the Bovril case.

Mr. Justice BYRNE: I only refer to it because Lord Justice Lopes treats it exactly as you are doing.

Mr. WALTER: That is in the Bovril case, 2 Chancery, 1896, page 609.

Mr. Justice BYRNE: At page 608 he says: "Now, to ascertain whether the word 'Bovril' is a fancy word, I test it in this way—the way with which I am most familiar. I say to myself, What would an intelligent jury say if they were asked whether 'Bovril' was a fancy word? If I had had to try the case I should have told them that they must keep in their minds that this word was placed upon the register in 1886, and that they must regard it as it stood at that time. I should have told them that to be a good fancy word it must be non-descriptive and meaningless as applied to the article to which it was intended to be applied."

Mr. NEVILLE: Lord Justice Lindley, as he then was, a little earlier in the case, at page 606, deals with the same point. He says: "I followed Mr. Bower's argument, and am quite alive to the fact that it has been applied to extract of meat. At the time when this word was first coined can one say more than this: that it had some relation, or might have some relation or application to an ox? Is that descriptive so as to destroy its character as a fancy word. The real truth is that this is a fancy word not in common use. I think the test suggested by Mr. Moulton is a correct one. I think it is eminently and purely a question of fact. Now, I ask myself this: Supposing that a jury were asked to say whether, on November 2nd, 1886, 'Bovril' was a fancy word not in common use, and supposing they said, upon a direction from the Judge, which I think it would be the duty of the Judge to give, that if they were of opinion that it really intelligibly described the thing sold it would not do, could they, with that direction, reasonably say it was not a fancy word not in common use? I do not think they could. That really settles the matter. In my judgment the appeal fails, and must be

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dismissed with costs." If there is a distinction between what Lord Justice Lopes says and what Lord Justice Lindley says in that case, I ask your Lordship to prefer the direction of Lord Justice Lindley, and I say so for this reason—not setting up the authority of one Judge against the authority of the other, but because of what Lord Macnaghten says about "meaningless" in his Judgment. The words "obviously meaningless," which had been used in the former case, are spoken rather disrespectfully of by Lord Macnaghten. I do not know whether your Lordship recollects the passage. It is in the Solio case, Appeal Cases, 1898.

Mr. Justice BYRNE: I have got the passage. It is at page 582: "Everybody knows the trouble that enactment gave"——

Mr. NEVILLE: "In trying to construe it, the Courts were almost driven to despair, until at last in the Court of Appeal two learned Judges declared that to be a fancy word a word must be 'obviously meaningless,' though one of those two learned Judges seems to have retracted or qualified his opinion before the next case was called on," so that I think it is preferable to take Lord Lindley's.

Mr. Justice BYRNE: I do not quite follow that. What is the meaning of that?

Mr. NEVILLE: It is so, my Lord.

Mr. Justice BYRNE: In one of the other cases there is a correction. It is not in the Bovril case.

Mr. NEVILLE: No, it is not in the Bovril case, and he is not referring to the Bovril case, and I do not mean that. I mean that Lord Justice Lopes in the Bovril case——

Mr. Justice BYRNE: That was in the Van Duzer case, I think.

Mr. NEVILLE: Yes, my Lord, it is in the Van Duzer case.

Mr. Justice BYRNE: Lord Justice Cotton rather differs from what Lord Justice Lindley had said. I think he puts in the word "not" and says it must be "not obviously descriptive" as applied to the article, instead of "obviously not."

Mr. NEVILLE: "Obviously meaningless." Now, my Lord, I venture to think—and I do so with the deepest respect—that one is right and one is wrong there, that is to say, if it is obviously descriptive, like "cheap and good," or "waterproof," it will not do; but it does not fail, because you can worry a description out of it. Then we have got it that it is a question of fact, that the fact has to be decided as on the 14th of March, 1884, the date of the registration. I will just read once again from Cellular Clothing Company's case. At page 334, Lord Halsbury says, "That is the whole question, the proposition being, as is rightly pointed out, that no man has a right to sell his goods as though they were the goods of another man. That is the proposition, and the passages I have read seem to me very clearly to dispose of the proposition that in the particular case here dealt with, one man is selling his goods as the goods of another. But, on the other hand, it has been pointed out, with great force and precision, that all the circumstances proved are compatible with the view that the word has retained its natural and proper signification. I do not think it is a matter that demands very copious exposition, because

as I have said, it is a question of fact. And I should like to point out here, that as we are dealing with a question of fact and not of principle, no previous case can be an authority. It being a question of fact, each case must depend upon the facts applicable to that case alone. A principle may be deduced from a previous decision, but there is no dispute about principle in this case, and therefore I am unable to understand what virtue there is in referring to other cases in which this principle has been affirmed."

Then, my Lord, before I leave the question of direction with regard to the invented word and the fancy word both, is not the real guide to the decision to be found in Lord Justice Fry's way of putting it, which is, so to speak, affirmed by the report of the Commission appointed to consider the question of trade marks, and referred to by Lord Herschell in the Solio case ? Is not the real test—is the person who seeks to register claiming or endeavouring to enclose any part of the great open common of the English language ? If he is, he is endeavouring to take away a right from the public which the public have already acquired, which is already part of their inheritance, and he must not have his mark registered. Therefore, whether he does it obviously and openly, or whether he does it by devious ways and secretly, or under cover of a colourable alteration of a word, it matters not ; but the question is, is he including the rights of the general public in the language ? If he is not, there is no conceivable reason why he should be deprived of his mark ; if he is, there is every reason why. I venture to think that that is in the end the true question.

Mr. Justice BYRNE : You will not accept Mr. Walter's view that in the natural development of the English language, by the ordinary use of sentences, and by the ordinary formative process of the natural development of the English language, this is just a common name ?

Mr. NEVILLE : There is a method of arguing, *post hoc ergo propter hoc*. A word has been invented, has been used for 18 years now, and it has been often adopted by persons who are using the English language ; therefore, if the word had never been invented by you, somebody else would necessarily have invented it, and made a present of it to the public, and it would have been a word just the same. I venture to think that a conclusion of that sort is not a practical one.

Mr. Justice BYRNE : Besides, it was not a necessary development, because, as I pointed out, there are other words already adopted in the English language which exactly express this shape.

Mr. NEVILLE : Now, my Lord, there is one other point, and that is, how far are you entitled to take the goods which have been dealt in under the mark, and imagine yourself to be fully acquainted with their character at the time when the registration is sought, and then say to yourself : Now can I extract any description of these particular goods from the mark that has been registered ? I venture to think that that will not do.

Lord Justice Lindley, on page 606 in the Bovril case, says this : " It would be altogether wrong for us to take the Act of 1883 and substitute for the words 'fancy word' 'a non-descriptive word.' That is not the

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language of the Legislature. But I agree that a word which describes the article to which it is applied will not do. Let us therefore ask ourselves whether 'Bovril' is a descriptive word. To my mind it is not descriptive, notwithstanding Mr. Bower's very ingenious argument. He tries to make it out to be a descriptive word, not by taking the word, but by taking a little bit of it, and he says that because 'Bov' may have some relation, and does have some relation, to 'ox,' therefore 'Bovril' describes—what? I do not see that it describes anything at all. Does it cease to be a fancy word not in common use? If it is so descriptive as to cease to be a fancy word not in common use, well and good; but if the description is only to be got at by the ingenious suggestion that 'Bov' must mean 'ox,' we must ask what the whole word means. No one knows—no one ever heard of it; I have not the slightest idea what 'Bovril' really means as a word. I followed Mr. Bower's argument and am quite alive to the fact that it has been applied to extract of meat. At the time when this word was first coined can one say more than this, that it had some relation or might have some relation or application to an ox? Is that descriptive so as to destroy its character as a fancy word?" Your Lordship sees what he means by that, and I have other authority on the same point. He means that you are not to take the article which you find has been used under that trade mark and then compare it with the trade mark and see if you can find in it any description of the article. Of course, if you applied that test to the particular case, you could not have a doubt what "Bov" meant — whether it would have been enough to prevent it being a fancy word is another question. He says: I cannot see what "Bov" means; I know that "Bov" may have some reference to an ox; and I know it is registered in Class 42 (Foods). How does that look? Does it mean a thing as big as an ox or as strong as an ox? What does that mean? I only know it may have some meaning connected with an ox. But if you put before me a bottle of extract of meat and say: "I call this 'Bovril'; can you tell me why I call it 'Bovril'?" The answer is perfectly obvious—Yes, because it is an extract of beef. That is not the true test. The true test is this: You come to the Registrar and you ask him to register "Bovril" in the food class. He has got to consider whether that is so descriptive of a food as to be non-registerable as a trade mark. That is the issue that he has before him, and on that I would refer you to Lord Herschell in the Solio case. The report is a little bit fuller in the Patent Reports than it is the Law Reports.

Mr. Justice BYRNE: Do you mean in the House of Lords' Reports?

Mr. NEVILLE: Yes, my Lord.

Mr. Justice BYRNE: I have got the authorised report which presumably has been revised, and I do not see why we should go and look behind that.

Mr. NEVILLE: Because this is not in the Judgment; it is in the course of the arguments that these words are used—that is the point. It is not altering the Judgment.

Lord Herschell says: "[Why should *Lux est vita* be refused.] We say that an invented word to be capable of registration must not be descriptive. If the Appellants are right, then any invented word must be accepted however descriptive. Take such a word as 'Phiteesi.' Is that an invented word? [Lord Herschell: Probably not, because it is a mere mis-spelling. It suggests at once the English words. Why is not any word which has never been used before, and which does not readily convey to most people (not to one or two) a particular meaning, an invented word?] [The Lord Chancellor: What do you say 'Solio' means?] Paper sensitive to the sun. [Lord Herschell: There is nothing about paper in it. What does it mean in the abstract?] 'Solio' means connected with the sun." Your Lordship sees what it means. It was applied to photographic paper, and, therefore, if you think of photographic paper and the "sol" you were likely to suppose that it had something to do with the connection between the sun and photography. Now, Lord Herschell treats it apart from that. He says: What does it mean in the abstract? There is nothing about paper in it at all. Then a little lower down he says about waterproof: "I should not call that an invented word. The word 'solio' by itself conveys to nobody an idea. When you find it is used with regard to photographic paper you might spell it out, and you might think of 'sol' the sun or might not, and if it were used with reference to boots you might think it had reference to the sole of the boot, and if it were used in reference to the earth, you might think it was from 'solum,' the soil, but that would depend upon the idea suggested by the connection in which it was used, not by the word itself." The inference there is and I think there is no doubt, and I will show your Lordship why in a minute there is no doubt that is what is in his mind. He says you must not get the meaning of your word inferentially, it must be a word that has a meaning itself.

Now, my Lord, may I point out to your Lordship why that must be so when you come to consider it? You have to put yourself in the position of the Comptroller on the 14th March, 1884, when they came to register it, or immediately before then, when they made the application. He is not entitled to ask what you are going to use your trade mark for. *Non constat*, that you had ever used it at all, or made up your mind precisely for what you would use it. You are perfectly entitled, so long as you do not get on the Register fraudulently, as they did in Batts' case, not for the purpose of fair trading, but for the purpose of interfering with other people's trade; the Comptroller cannot say: "What do you want this trade mark registered for?" You come and say: "I want this registered for Class 3." What has he to consider? He has to consider whether you are entitled to have your trade mark registered in Class 3, because it is a fancy word, unless it is a word which, as applied to the articles in Class 3, is descriptive, and that is all he can possibly know about it.

Mr. Justice BYRNE: To any article in Class 3?

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Mr. NEVILLE: Yes, I agree there that it must be any of the articles.

Mr. Justice BYRNE: The Solio case was apparently the application to photographic paper. I rather gathered that; I have not got the exact thing. "The Registrar having refused to register 'Solio' as a trade mark in respect of photographic paper." So I suppose it was an application in respect of that only.

Mr. NEVILLE: You may register for any article in a particular class—you need not register for the whole class. If that is so, that only carries my argument further than I ventured to put it. It shows I am suggesting a right in the Comptroller which he does not really possess. Lord Herschell says: "I am not going to look at photographic paper and then at the word 'solio' and see what the word 'sol' means applied to that and say it is descriptive if it has reference to the sun, because it is a description of the adaptation of the paper for use in photography."

Mr. Justice BYRNE: You have read some interlocutory observations, but Lord Herschell says at page 582: "Coming now to the particular case under discussion, I cannot doubt that the word 'solio' is an invented word, unless it is to be regarded as the Italian word 'solio,' which means a throne, in which case it has certainly no reference to the character or quality of photographic paper."

Mr. NEVILLE: Yes.

Mr. Justice BYRNE: He does test it by that. If it was limited it was only photographic paper.

Mr. NEVILLE: Then, of course, it was an old word. If it was "solio," a throne, it was not an invented word. He says if it is, it is not descriptive, but it had to be in that case an invented word, and if it was the adaptation of a foreign word it was not an invented word.

Mr. Justice BYRNE: He says it is unimportant, but if it is the test, I must say it has no such reference.

Mr. NEVILLE: I do not think that really does away with the force of what he says in the earlier part of the case, where he is simply considering the question of what descriptive means. He says it is not descriptive, because it has no meaning of itself.

Mr Justice BYRNE: You take the risk, you say if you apply to register in the whole class you take the risk of its being said: "Oh, that is not a fancy word with reference to one particular item"—that would be enough to disentitle you.

Mr. NEVILLE: I do not know whether that would not be putting it a good deal too strongly against me.

Mr. Justice BYRNE: I was wondering how you put it.

Mr. NEVILLE: I should not be prepared to go so far as that. I think I should be setting up my argument against Lord Herschell's authority if I did. The Registrar knows what class you are coming to register it in, and possibly it is a word which might be considered descriptive when it had reference to a totally different class. It seems to me that there must be cases of that kind.

Mr. Justice BYRNE: I meant within the class—if you applied to register in Class 3.

Mr. NEVILLE : It is a general impression and not a particular impression that the Comptroller can have before his mind. He cannot go through every conceivable thing in the chemical class and say : " Could that be a possible description of any article ?" That is not the point. The question is, if you please, as applied to articles in Class 3. That is given us—as applied to chemicals, has this a meaning in itself—" tabloids " ? I think on that question he would be entitled to take into consideration that there was a word tablet which had been used in regard to articles which would come within Class 3. It seems to me that that is a matter which it is fair to keep before the mind. Now would " tabloids " ? As a matter of fact I think you are entitled to say this, that it did not strike the Comptroller as anything but a fancy word, or he would not have put it on the register. I do not mean to say that that is conclusive at all, but you are asked 18 years after to overrule his decision.

Mr. Justice BYRNE : Class 3 is " Chemical substances prepared for use in medicine and pharmacy." Is that the same as the old ?

Mr. NEVILLE : Yes, my Lord, they have not been altered, my learned friend, Mr. Kerly, says. You have to consider with regard to that class, what does " tabloid " mean ? You cannot say : " I should like to know what you are going to use this for. It might have been fluid." The answer is : " I am not going to tell you. I have not made up my mind. I am going to register it in this class. I know I am entitled to register it for some articles in the class." That is the test. The Comptroller cannot go through every article and say : Supposing he applies it to such and such a thing, could I say it has a meaning ? I do not think that is how it could be done. The question is has " tabloid " been used in connection with those words which your Lordship has before you ? When we come to that there is, I submit, my Lord, only one item of evidence which is of the smallest importance, and that is of very small importance. That is what people thought afterwards because it is quite obvious that you cannot prove whether a word was a fancy word or not in 1884 by showing what meaning has been attached to it afterwards. Therefore for this reason, of course, the whole of that evidence goes by the board. But there is some evidence which I think I may ask your Lordship to take into consideration, and that is that a considerable number of intelligent men come here and say, notwithstanding the association (those who have sufficiently detachable minds to enable them to look at the question apart from the association) : " Except in conjunction with Burroughs & Wellcome's goods I attach no meaning to the word 'tabloid.'" This is said by men who are scientific men, who are perfectly familiar with the term " eidos," and that it has been applied to a number of English words. Yet you get a number of them who have absolutely no axe to grind of their own, they are perfectly independent, who say : I may be right or wrong, but to my mind, the word has no meaning as an English word, even now, except in conjunction with Burroughs, Wellcome's goods. I should like to call your Lordship's attention to the person who did say that.

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Mr. Justice BYRNE : Was it Sir Thomas Fraser ?

Mr. NEVILLE : He was one. I have a list of them.

Mr. Justice BYRNE : Sir John Crichton Browne had been looking at it from a philological point of view, and Sir William Thomson.

Mr. NEVILLE : Sir William Thomson is not at all a bad illustration.

Mr. Justice BYRNE : " It conveys no idea of anything definite ?—No, no idea of anything definite beyond its association with these various shapes that Burroughs & Wellcome send out." That is to say, apart from these people and the thing they send out, it does not convey anything.

Mr. NEVILLE : I am quite sure that I shall be able to lay my hand on it. I have got a list of the witnesses, and I feel sure I shall be able to lay my hand on it before long ; then I will submit it to your Lordship, because I should not like not to be able to give the references.

Mr. Justice BYRNE : On his cross-examination Sir William Thomson says : " Apart from Messrs. Burroughs, Wellcome & Co., does the word ' tabloid ' convey any meaning to your mind ?—As a thing ? Q. Yes ?—No, not apart from them. Q. Nothing at all ?—No, I do not know what it means beyond its association with certain forms of drugs which are sent out by Burroughs, Wellcome & Co."

Mr. WALTER : Later on it does occur to them that there are some.

Mr. Justice BYRNE : This is in Sir William Thomson's evidence : " It conveys no idea of anything definite ?—No, no idea of anything definite beyond its association with these various shapes that Burroughs, Wellcome & Co. send out."

Mr. NEVILLE : I will give them to your Lordship a little later on. All I will say about them now is take Sir William Thomson, he is an instance of one of them, there are several others who say the same thing, and they say that they could not. I remember one of them saying he tried to make out what it was, he could not think what a " tab " was, he could not realise what it meant. Let us take one additional example at the top of page 122. He is asked : " ' oid ' conveys no meaning to your mind ?—Most distinctly —a compressed drug made by Burroughs, Wellcome & Co. Q. No, ' oid ' ? I remember sufficient of my Greek knowledge to know that. Q. Philology has not interested you much ?—Very much, indeed ; it is one of my pet subjects. Q. What does ' oid ' mean ?—I think the general acceptation is ' idos,' the Greek for ' like.' Q. To you, as a philologist, ' tabloid ' is a word pregnant with meaning ?—It is a hybrid word. Q. I do not want you to do your philological knowledge injustice. It is a word pregnant with meaning—' tabloid ' ?—It is rather——" Then he is not allowed to go on. " Come now, let us talk of philology ?—It is rather difficult to know the derivation of what that first syllable ' tab ' is– it may be ' tabella.' I have vainly endeavoured to find out what the ' tab ' meant ; I have never got beyond that. Q. You have burnt the midnight oil on the subject of tabloids then ? I have thought

of that first syllable 'tab,' but I have never satisfied myself of the derivation of that 'tab.' Q. It is quite meaningless except as connected with Burroughs & Wellcome's goods ?—Quite meaningless."

Now, my Lord, they endeavoured to attribute a meaning to it 18 years afterwards, or many years afterwards. After the particular compressed drugs made by Burroughs, Wellcome had been in the market a great number of years makers of dictionaries and others have set themselves to work to give a meaning to it, and it is rather interesting to observe that my friend in his argument was never able to make up his mind whether he associated the meaning of the word with "table" or whether he associated the meaning of the word with "tablet." Sometimes he said one and sometimes he said the other. It is observable that all the persons who have undertaken to give the derivation of the word, as they call it in the dictionaries, with one consent come to the conclusion that it was "table," plus "oid," and it meant something like a table. Now, did my friend suggest that it meant anything like a table ? I suppose my friend says: "Yes, but we may find that the root of the two words 'tablet' and 'table' is the same, therefore it does not matter." Does it not matter ? "Table" and "tablet" in the English language, which is the only language we have to deal with, do not mean in the least the same. Supposing that you suggest ~~table~~ Tablet is in truth only a little table, giving the meaning by derivation of the word, it is not the meaning of the word in the English language. If you go into a furnisher's shop and ask for a tablet, you certainly would not be served with a table. If you go to a monumental sculptor and ask him for a little table, he would not give you a tablet to put up in the church He would not know what you meant. In the English language the two words are totally distinct, and if you apply "table" to a drug, it conveys no meaning of any sort or kind. It is absolutely incomprehensible, and therefore, if table is wholly incomprehensible, surely "like a table" is equally incomprehensible. Nobody ever saw a drug like a table. Tablet had a certain meaning in 1884, and what was that meaning ? A flat, square form of comfit, I think it is called in one of the dictionaries, or sweetmeat—a flat, square-shaped sweetmeat. So that that is what tablet meant in 1884. That was not like a table the least in the world, and the remarkable thing is that there is one characteristic which you may say exists in common between a table and a tablet, as far as I have been able to discover, and that is only one, which is the flatness of surface. That is the exact contrary, if one may speak of contraries in shape, to a bi-convex disc, which it is said that "tabloid" describes. So that the only characteristic which the two words have in common is the one characteristic wanting from the article which is said to be described as "tabloid" indifferently, whether you derive it from table or tablet. I think that goes a good long way to show that it is not descriptive. But then it does not stop there, because my friend has invited his witnesses, who are all quite satisfied that the word is a descriptive word, to inform the Court what it is to their minds descriptive of, and the result is rather amusing. They all of them endeavour to give

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a general description of the article which they have known for so many years to be sold under the name "tabloid." They none of them agree, or very few of them agree together, as to what the description will be, but nobody can hear their evidence and remain with the slightest doubt in his mind that they are endeavouring to describe the article which they have known as a "tabloid" for 18 years. Some of them say it is compressed. I think nine-tenths of them say that part of the description involves compression; that is to say, that it is a compressed drug. So far as the public have adopted the word, and talked about wisdom in tabloid form, and so on, they have actually adopted, and entirely adopted that view of the word, and to their minds it involves compression and nothing else. Where do they get that notion from? From the meaning of any word in 1884, or from their recollection and knowledge of the article which has been sold under the mark since 1884 up to the present time. There is no compressive meaning about "tablet," and there is no compressive meaning about "table" of any sort or kind, but I think almost without exception they say as one of the characteristics involved in the descriptive word "tabloid," compression appears. Of course it does, because they are describing a "tabloid," that is to say, the word has no meaning to them apart from Burroughs & Wellcomes, except in reference to the article which they have seen sold for 18 years under the name of tabloid. They know that is a bi-convex disc, they know it is compressed, and they know another thing, that it is portable. Therefore a good many of them said one of the ideas involved in "tabloid" was portability. I should like to know what there is portable about a tablet or table, I mean accepting the word portable so as to indicate that as the meaning of the word "tabloid." Then others suggested a description that it meant something which was in a convenient form for taking—a small and convenient form. My Lord, there is nothing small about a table, and there is nothing small about a tablet. There again they are simply to generalise the description of the drugs which they have known and sold under Burroughs & Wellcome's name. When my learned friend started on that question he was very persuasive with regard to it being indicative of form. They were all asked whether it did not mean the shape of the article. It very soon turned out that according to their own account it was used by the public quite indiscriminately with regard to shape, and did not allude to one shape any more than to another. It only alluded to a certain class of drugs in a small portable and convenient form for carrying. So that it had to be given up. As the evidence went on, you will find the reference to tabloid form dropped out of the questions which my learned friend asked, until ultimately he said: "It has not anything to do with the shape at all; it has something to do with the form in which the drug is administered—not the form of the article, but the method of administering the drug, and so on." But the point of it all is that it is quite obvious that not one of those witnesses is able to give you his opinion of the meaning of the word "tabloid" except by reference to the article which he has known and sold as "tabloid" for a great many years. He tries to describe it with more or less success, and it is not far from what he knows to be

a tabloid to the meaning of the word "tabloid." Hence you find compression, portability and convenience all included in the description which he chooses to apply to "tabloid." Supposing those witnesses had been called before the Comptroller on the 14th March, 1884, and been asked what is a tabloid? One thing we know beyond question; and that is, he would say, "I have never seen it before," because the evidence is perfectly clear that no one had ever heard of the word "tabloid" before Mr. Wellcome invented it. So we start with that. He would say I never heard of it before. But if he is asked what does it mean with regard to a drug how could he possibly tell you? Supposing he were philologically inclined enough to invent a derivation for the purpose—we know by the way that it had no derivation. Mr. Wellcome was perfectly clear about that. He said; "I do know the termination 'oid' is used in connection with certain scientific words, and was even so long ago as 1884, and very much more so to-day," but he said: "I had not got that in my mind when coining the word tabloid. I tried all sorts and kinds of junction of syllables in the endeavour to get hold of a fancy word which would catch hold of the attention and the mind of the public, and I lighted upon 'tabloid.'" Supposing a hypothetical witness was called before the Comptroller in 1884 and was asked what he meant by "tabloid," he would say: "I never heard of it before." He would, of course, if he were a philologist, come to the exact conclusion which these philologists have come to in their dictionaries, and he would say, "I derive it from 'table' and 'oid.'" He would not in those days, of course, because "oid" was much less frequently used. He could not find any other derivation except "table" plus "oid." The Comptroller would have said: "What does 'table' plus 'oid' mean—a table as applied to oid?" I have not ingenuity enough to frame an answer to the question of the Comptroller on that point.

Mr. Justice BRYNE: There was one point in the argument that tablet is this form was known.

Mr. NEVILLE: Yes, in this form. That is perfectly true. Let us take that for a minute. Can it be said that "tabloid" was only a colourable imitation of "tablet," meaning the same thing? I think we have one very good test there. The Comptroller had "tablet" on his register, and it did not occur to him that there was such a similarity between "tablet" and "tabloid," that tabloid ought not to be registered. He has no right to put on two marks, which are so like that they lead to confusion of mind. There is no difference in the wording of the Act with regard to two trade marks and two men each with a trade mark. Just let us see, because I think we are are entitled to see, what has happened since. Was it merely a colourable imitation of "tablet"? If it were, then, of course, it would have interfered with the use of the word "tablet" necessarily. I mean to say, if it was colourable it must have been a word which really meant "tablet" to everybody's mind, and which would not induce them to draw any distinction between the new word and the old word which existed. I think I am right in saying that. That is the meaning of a colourable imitation.

Nov. 27. 1903 — That is to say, this new word is not spelt the same as the old word, or it does not look the same as the old word. Nobody hearing it would know that it meant the same thing, just as the word "Phiteesi." Though it was a new word, and only identical in sound with the old words, still it was colourable. Everybody would see "Phiteesi" applied in the boot trade. That is one of the words that Lord Herschell refers to, and although you spell it quite differently, of two words with the same sound which had a distinctive meaning in the English language, that was colourable. Is it true that "tabloid" meant the same thing as "tablet"? Let us take one test of it. Messrs. Burroughs & Wellcome, perfectly true, attempted to assert a right to tablet as applied to their drugs. They put it on their register and they put it on the register in respect of goods which never had been called by that name before. I mean to say, if you compare the definition of "tablet" to be found in dictionaries in 1884 with the article which the Plaintiffs intended to sell, and did sell, under the name "tablet," you will see that there is nothing in common between the two, and that "tablet" was a flat square cake or sweetmeat, and "tablet" had no meaning then as applied to their article, which was a bi-convex disc. So that your Lordship sees with regard to that it was meaningless. Still it was an English word known to everybody and used in a variety of senses. What happened? They attempted to set up an exclusive right and other manufacturers immediately objected. They said: "No, you have not the right. We have the right to use it as you have," and on good advice they did not attempt to assert that right. Having done that they put "tabloid" on the register and they sell that "tabloid" for 18 years and nobody ever resents or complains of the use of the word until the year 1903. Of course that really is of immense weight in considering the validity and the weight to be given to an argument in 1903 to the effect that "tabloid" and "tablet" were colourable; that "tabloid" was a colourable form of "tablet." Nobody thought so in 1884. Nobody had complained of the use of the word "tablet" and asserted successfully their right to use the word "tablet." They said, "No, we will not have 'tabloid' used because that is only a colourable imitation of a word which we are entitled to use, and which we insist upon as being entitled to use." Then it is said: Oh, but that is because Burroughs, Wellcome & Co. threatened, and it was not worth anybody's while to set up an opposition. My Lord, if that was so, it was the same Burroughs, Wellcome & Co. who endeavoured to establish their tablets as the Burroughs, Wellcome & Co. who did establish their tabloids. Why was it, if that argument is valid, that they were immediately faced by the trade when they tried to use "tablets," and had no resistance offered by the trade at all when they did use "tabloids"? If the argument holds good in one case, does it not hold good in the other? If it was simply the authority or the vindictiveness or the oppression of Burroughs, Wellcome & Co., which prevented the whole drug trade of England from asserting their rights in the case of "tabloids," they would equally easily have prevented them asserting their rights in the use of the word "tablets." With regard to the word "tablets," you have complaints at once, and they did not press it. With regard to the other there has not been one single complaint from any

did not attempt

source whatever of the right to the use of the word "tabloid" being in the owners of the article from the time of the registration of it up to, I might say, the commencement of this action.

Mr. Justice BYRNE: Although it has been constantly advertised, so that everybody in the trade must have had ample notice of it.

Mr. NEVILLE: Yes, my Lord. Let me in passing—because really it is only a straw, but sometimes straws are indicative of the course of the wind—take that advertisement of Mr. Pears asking for a coined word suitable for registration, of which a good example is "tabloid."

Mr. Justice BYRNE: And to which he adds certain other words, which I do not think you could possibly justify.

Mr. NEVILLE: "Varalette."

Mr. Justice BYRNE: He had certain others. "Perloid" is one of the other words. He is not very good company for you altogether, I think, not that I am expressing a decided opinion on the other words, but "Perloid" struck me.

Mr. NEVILLE: Yes, my Lord, but it is fully good evidence of absolute acceptance by the trade.

Mr. Justice BYRNE: Oh, yes, by him.

Mr. NEVILLE: Of "tabloid" when the trade absolutely refuse to receive "tablet."

Mr. Justice BYRNE: Yes.

Mr. NEVILLE: I do not want to overdo the argument, but I think I am justified in saying that the case 18 years afterwards is colourable use of the word "tablet," and that you find no resistance to "tabloid" and resistance to "tablet." You cannot have the same knowledge outside the trade as in it. It is very difficult for Judge or Jury, who are not actually connected with the trade, to know what would interfere with the prescriptive right of the whole English people to use a common word of the English language like 'tablet," and I think the evidence of the trade is the best that can be got on the point. I do not think anybody can speak with the authority that they can, and I think their silent, unconscious evidence, the evidence which you glean from the facts of 18 years, is the most valuable way in which they can give their testimony. I think you find at the end of 18 years there has not been one single instance of objection from the very people who objected to "tablets," and it is put forward by them to their mind as pointing—because, please remember, it is not the man in the street who knows the terminations, it is not the man in the street who knows one of these thousand words which my friend has produced—for every man who knows one single termination "oid" which has reference to "eidos" there are thousands who know terminations "oid" which have no reference to "eidos," and not one man in a thousand, who knows that the "oids" are derived from "eidos" as a termination, meaning similar. How many men in the street know where "oid" comes from? My Lord, I will make a confession. I did not—I ought not to say it—but I am sure that a great many people do not, and you have to consider the common knowledge.

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Mr. Justice BYRNE: The truth is I expect you did not realise it until you were put upon thinking about it.

Mr. NEVILLE: Yes, that is just what I submit will not do. If you think of "oid" now—perhaps it is a long time ago, but "rhomboid" ought to have appealed to one and one ought to have recollected "rhomboid," but the mass of the other words the man in the street does not come in contact with at all. They are mostly scientific words, and unless a man is interested in the particular branch of science he does not come across them, except in an inattentive way, it having nothing to do with his own line in life. I venture to think not only was Mr. Wellcome right in saying he had not eidos in his mind when he formed "oid" in his mind, but that not one man in a thousand would have suspected he was thinking of "eidos" when he invented "tabloid." In the drug trade they have accepted "tabloid" as a coined word. My Lord, it was a coined word. The only question is, is the new coin a coin of such a colourable likeness to the old coin that you cannot tell one from the other? They have succeeded in telling one from the other all these years, and the only difficulty (which has been so much insisted upon) that has arisen has been from the popularity of tabloids, from the fact that owing to the immense extent of Burroughs, Wellcome & Co.'s trade "tabloids" has become in a certain way a popular word. Now my friend says that having once given a word to the public you cannot take it back, and so forth. That, if I may say so with great respect to him, is a complete misapprehension. If it is an invented word, whatever use the public can make of it is a benefit to them, and not a deprivation. They may all use it in the sense in which it has been used in "Punch" and elsewhere, and I am quite sure Burroughs, Wellcome & Co. will never complain. They are perfectly entitled to talk about wisdom in a tabloid form; my learned friend is perfectly entitled to give his evidence, as in the case of Mr. Jones, in an exceedingly compressed form, where a man speaks to 800 doctors. "Tabloid" in that sense does not interfere with anybody's rights at all, the language is richer, if you please, by the familiarity gained by the public with compressed drugs sold under the name of "tabloids." You may use the word, but you must not trade under the word. That is the only result of "tabloid" being upon the register. You cannot trade under it because owing to the immense trade that has grown up in 18 years you have become familiar with it. That is the only difficulty that has arisen, which has resulted from the great familiarity with the word occasioned by the large sale and the very large advertisement of Messrs. Burroughs, Wellcome and Co.'s drugs. My friend said with regard to that—and I should like to say a word upon it—that it is a question of monopoly, and that monopoly is the same in the case of a patent as in the case of a trade mark. I think those were the words that he used. My Lord, there could not be, I venture to think, a wider misstatement of the actual fact. There is hardly any similarity or analogy between the monopoly granted under a patent and the monopoly granted under a trade mark. Why? Because the monopoly granted under a trade mark is a monopoly for a particular article which but for

the patent law anybody could make who succeeded in finding out how it was done. That is a monopoly in the thing sold, and the natural right of an Englishman to make anything that he can is interfered with and postponed during the life of the patent, A and in consideration for a benefit granted to the public, and that is, the ultimate placing at the disposal of the public of a new invention which they in their turn can dispose of. That is a patent monopoly, but what is trade mark monopoly ? It gives you no monopoly in the thing sold ; it is only a monopoly in your own reputation ; it is only a monopoly in your B own make. It deprives nobody of anything which existed before ; it takes nothing from anybody else. There is only one case where there is the slightest analogy between the monopoly of a patent and the monopoly of a trade mark, referred to in the case my friend cited, that is where you seek to protect the sale of a new invention of your own which you call by C a particular name by registering that name as a trade mark. Whether you can do that has been doubted in the "Vaseline" case, and I should think it is open to very considerable doubt, but here we are dealing with a perfectly well known product which has no novelty about it at all. Anybody was entitled to D sell compressed drugs in the shape, form, and way we sold them before we registered our trade mark "tabloid," and after. They did it both before and after, and they continue in increasing quantities to sell these goods, the increase of the quantities being largely the result of the popularity of the form of medicine supplied by Burroughs, Wellcome E & Co. They have never been interfered with, and could not be interfered with, in selling products as like ours as they could make them. It was an old product, and the only thing the Controller's action has resulted in is this : that they cannot sell their make for ours. That is the only monopoly that is given to a man by a trade F mark, at all events regarding an article which is a known article of commerce before he registers his mark. He is entitled to a protection for his own make to prevent people from substituting other makers' goods to those he desired to get—his goods. Therefore I venture to think my friend was quite wrong in supposing there was a monopoly, as he put it, G the same in patents as in trade marks. I submit they are monopolies of a totally different thing and totally different character.

Mr. Justice BYRNE : I do not think that is quite the way Mr. Walter put it, but rather this : It is not like a patent in this respect because a patent expires and is given only for a certain time ; whereas H the other is a monopoly for always, and therefore the rules regulating it ought to be more strictly dealt with.

Mr. NEVILLE : That involves the conclusion that they are the same thing, or else where is the analogy ?

Mr. Justice BYRNE : I thought you were not giving good form to I the argument of Mr. Walter.

Mr. NEVILLE : I daresay, but that is what I understood him to say. But that is a fallacious argument unless you use monopoly as meaning the same thing in the two cases. I am pointing out it does not.

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Mr. Justice BYRNE: The difference of legislation is founded on that very difference you say?

Mr. NEVILLE: I say it is a totally different thing. I say there is no harm done to anybody by allowing a man to retain the benefit of his own make. There is harm done by a man saying: "I make a particular thing and though you can make it quite as well as I can you shall not." We say, "Make compound drugs in a bi-convex form as much as you please, and sell them as much as you please, and in that respect take as much advantage as you can of the demand we have brought about by selling goods under that shape, but do not use our name—that name which you never used before and never wanted to use until our trade became so large as to make it a temptation to you to see if you could not substitute a cheaper article for it and get the public to take it instead."

On that point, about the gift to the English language, which you cannot take back, and so on, I would say to my friend this: If it is a gift-horse you cannot look it in the mouth. You must have it with all defects and with all diseases, and the only defect that you can find in the word is that you cannot play with it; you may use it, but you cannot play with it. All we ask is that we shall he maintained in our right to keep the advantage which we have gained by our 18 years' trade. I keep referring to those 18 years, perhaps unnecessarily, but I think it is a matter which ought to be kept constantly before the mind of the Court, because I think your Lordship would agree with what was said by Lord Justice Romer in Bass's trade mark case that "every reasonable intendment should be made in favour of long user of a mark." It must be very difficult at any time to carry yourself back to 1884 and to conceive how your mind would have approached the subject if the intervening years had gone and if your knowledge to-day was no more than your knowledge would have been in 1884. It is, my Lord, almost impossible to reduce one's mind to that kind of blankness. I mean the operation of the intervening years cannot fail to have its effect, and, therefore, I think one ought to keep guard over oneself lest knowledge acquired and ideas formed during the intervening years may influence one's decision with regard to a question which ought to be decided, of course, upon the knowledge which existed in 1884. I cannot help thinking that if you banish from your mind all notion of what has been sold by Burroughs, Wellcome & Co. you cannot help coming to the conclusion that "tabloid" would not have conveyed to your mind a bi-convex form, and that it would not have conveyed to your mind a tablet which at that time, as described in the dictionaries, was a word of a totally different meaning. I think one should also bear in mind that it is quite true the word was used in respect of articles which had been previously called tablets, that is to say, a similar line of goods formerly sold as "tablets" were then sold as "tabloids," but I do not think when you come to look into that it is of any very great importance because the question is, was it a descriptive word? "Tablet" itself was not a descriptive word, it really comes to that, and unless "tabloid" is so like "tablet" that there is no genuine distinction between the two there can be no other conclusion except that it is distinctive.

Mr. Justice BYRNE : " Tablet " itself was not a descriptive word as applied to that particular shape. That is what you mean.

Mr. NEVILLE : Yes. It was not descriptive of what we sold under it. It was descriptive of a good many tablets in the market, but not A descriptive of our tablets at all.

My friend has asked for, and very properly has, a right to reply. One thing I want to guard against, and that is undue weight being given to a style of argument which the necessities of his case drives him too—that is arguing from what is said about a perfectly well known word to a B coined word. There is, it seems to me, all the difference in the world between the two things. When you are dealing with a word like " Melrose " or " Electric," which are words with an actual definite meaning, then the question is, can it have a meaning as applied to the goods of the class for which the mark is registered ? Could they bear a meaning to C the ordinary mind in reference to the goods in which the class is registered, and the Court in those cases has held that they can. But it is a very different thing when you come to consider the question of an existing known word with a definite meaning (be it geographical, or be it anything else), and a word which is coined. Therefore I think so far as the cases D can have been of any assistance at all, it is no use referring to statements referrable to the particular facts of a particular case where the meaning of a word, which is not in any sense an invented word, is in question, and when you are dealing with a word which is undoubtedly a coined word, and has been accepted as a E coined word, and against which the only thing that can be said is that " tabloid " is so like " tablet " that it means one and the same thing.

My Lord, may I just for a moment repeat what I said about that. Everybody who has tried to give a meaning to the word has come to the F conclusion that " tabloid " is " table-oid," and, as I pointed out to your Lordship, if that is true, like a table is quite a different thing from tablet. Tablet is not like a table except that it has one characteristic in common, that is, flatness of the surface. In the English tongue the root is a totally different thing to the G meaning of the words as used by Englishmen, and consequently when it is said that to say a thing is like a table is a colourable imitation of saying a thing is like a tablet, I really do not follow the argument, because they mean two totally different things. If it is like a table it is not like a tablet in any single particular except that it is flat, although the H derivation may be just the same. Words are not used in the English language in accordance with their derivation. You have to consider what is the meaning of the words as used by the ordinary Englishman, and undoubtedly he does not use " tablet " in the sense of " like a table " in any way except that in both cases he usually refers to a flat surface ; I and, as I pointed out in this case, if you are going to take that test as a standard, then it does not apply to the goods in question at all. So, clearly, it is not descriptive of our goods, because they are bi-convex discs. That seems to me to displace the argument that it is a colourable imitation of tablet. Outsiders who endeavour to find out the meaning of the

Nov. 27, 1903 — word say tablet is like a table, but it cannot possibly be said that this is a colourable imitation of tablet.

Now I have got, I am glad to say, to the notes of the evidence, and if your Lordship will allow me, I will just refer to the pages I want to. The first is on page 31, Question 44, and it is in Mr. Wellcome's own evidence. I do not think that is on the point; however, I will read it. "Have you been able in any way to find the word 'tabloid'? I have never been able to find any use of the word, and I have never found the word in any shape or form before the date of my invention or registration of it." That, of course, is common evidence; there is no difference as to that. Now, my Lord, I go from there to page 100, Question 1112. Dr. Luff is a Doctor of Medicine, a Fellow of the Royal College of Physicians, and the Scientific Expert to the Home Office. He is asked: "You do not know the word 'tabloid' except used with regard to Messrs. Burroughs & Wellcome?—That is so. I have only seen it in medical literature where it has referred to their products. Q. That is all you know of it?—That is all I know of it. Q. What shape do you consider a tabloid is?—I do not consider that it necessarily need be of any particular shape. Q. What should you call *this*, for instance. (Handed.) What should you call that if you were asked to describe its shape?—Is it solid? Q. I do not know what it is. You may assume it is solid?—You ask me the shape? Q. Yes. What should you call it?—I should call it a bi-convex body."

The next is on page 108, Question 1267, where Sir Francis Laking is asked: "What do you understand by 'tabloid' apart from the particular person who makes it?—I do not know. I suppose 'eidos' means 'like something.' I suppose it is supposed to be a kind of hybrid term. It does not seem to mean much of anything." Then at page 115, Question 1401, Dr. Macalister is asked: "What do you understand a tabloid to mean in shape? You say it is associated in your mind with Burroughs & Wellcome. What does it mean when you order a patient a tabloid? What are you ordering him apart from the make?—That is a question which has no answer. I cannot answer. Q. What sort of shape is it going to take?—The shape of a tabloid is a bi-concave disc or bi-convex disc." Then Professor Attfield, on page 118, at Question 1458, is asked: "Let us get this a little more definitely. I will just put an example to you. Take food—compressed food in tabloid form—you would have no doubt what the shape was? I have always associated the word 'tabloid' with the articles produced and sold by Burroughs & Wellcome, and that is what I should understand—the shape which they have adopted and made so prominently public. Q. Would you understand any shape, or any particular shape?—Yes, the particular shape that they have always used. Q. And you do not think that the word 'tabloid' has any wider meaning than that?—No, I do not think it has." Then Dr. Hall, the philologian, at page 122, Question 1529, is asked: "Come now, let us talk of philology?—It is rather difficult to know the derivation of what that first syllable 'tab' is—it may be 'tabella.' I have vainly endeavoured to find out what the 'tab' meant. I have never got beyond that."

Then comes Mr. Robert McAdam at page 131, Question 1703. He is the General Manager of the Glasgow Apothecaries' Company, who are wholesale and retail chemists. "Q. 'Tabloid' has no meaning in your mind?—Except that it means Burroughs & Wellcome's compressed drugs. A That is the only meaning it has with me. Q. Has it any association with 'tablet' at all?—It may have, but I know well that 'tabloid' when it is asked for, is Burroughs & Wellcome's. That is their name entirely. Q. You have never troubled what it meant?—Never." Then Sir Patrick Manson, at page 148, at Question 2033—"'Tabloid' B conveys to your mind a definite meaning apart from Burroughs & Wellcome, does it not?—I cannot say that it does; it is not an English word. Q. It occurs in several English dictionaries, of course?—I am not familiar with them. Q. If anyone was to ask you what a 'tabloid' was, you would have no difficulty in knowing what he meant, C apart from the name of the manufacturer?—I should put it down as one of Burroughs & Wellcome's manufacture. Q. But apart from that?—It would have no meaning to me" Of course, that is a very good illustration of the difference between my learned friend and the witnesses all through. "What do you mean when you say that 'tabloid' has a meaning? D If you mean that, I having been familiar with tabloids for 18 years, cannot tell you what I have known a tabloid to be like, of course I could not answer you truly that I cannot. I can give you a more or less accurate description of what I have known Burroughs & Wellcome to sell under the word 'tabloid' for the last 18 years. But that is not E telling me what 'tabloid' meant in 1884; it goes no way towards telling that. Unless I had known 'tabloid' used in connection with this particular class of drugs for 18 years, I should not have known what it meant." That is what they mean; and when my friend puts it to them in that way, of course it is really a difficult question to answer. The true question is F this: If you have known tabloids for 18 years, what is now apart from Messrs. Burroughs & Wellcome, a tabloid to your mind? Then you would get a description of the medicines that Burroughs & Wellcome have sold. But all that information must necessarily come after 1884. That is not attributing to "tabloid" a meaning in itself; it is simply saying that I G know what "tabloid" in the ordinary sense is, I know the list of goods to which Burroughs & Wellcome attach that particular mark, and I can within a little describe to you the kind of goods that they are—they are compressed goods in various forms, chiefly bi-convex discs. But that of course, I submit is altogether out of the question. H At page 170, Question 2489, Sir A. Critchett is asked, "You have never considered the meaning of the word, I suppose?—I have considered the meaning of the word and have endeavoured to find out what it did mean. Q. What was the result of your study in the matter?—I was really unable to arrive at any definite conclusion, and I thought that it must be a word, I like the tabloid itself, which had been manufactured for a special purpose. Q. But 'oid' is a very well known termination, particularly in the medical profession?—Certainly. Q. And it has a very general definite meaning?—I should say it has various meanings. Q. It is always 'of the shape of' or 'of the nature of'?—Yes." Of course, my Lord, that is too general an

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answer. It is by no means always. "Q. It never has any wider meaning than that?—From the Greek word 'eidos' probably. Q. Still it never occurred to you that it had any meaning?—No. Then he is asked about the literature which is quite a different thing. Then Sir William Thomson, at page 180 (Questions 2624-2631), gives his evidence on the point, and that has been already read. Then Sir Thomas Fraser, at page 183, I think, deals with it?

Mr Justice BYRNE: Yes. "Does the word 'tabloid' convey any meaning to your mind apart from Burroughs & Wellcome?—No, I do not know that it does. Q. It suggests nothing to you as to the character and the way in which the goods are put up?—Yes, by association—by seeing those things which Burroughs and Wellcome produce under that name, I do naturally assume a form for them." That is the passage from your point of view.

Mr. NEVILLE: Then Mr. Cruse on page 207, at Question 3101, is asked: "It is so woven in your brain with B. W. & Co. that it has no meaning apart from that?—Certainly not the word 'tabloid.' If you ask me about tablets there are any number of tablets, but to my mind 'tabloid' indicates a particular manufacture." Then he is asked: "'tabloid' and 'tablet' have nothing in common?—They are very much alike; but it does not follow that tabloids are tablets. A tabloid must be a tablet. Q. A tabloid must be a tablet, but a tablet need not be a tabloid?—That is according to my way of thinking." That, of course, my Lord, is again association—he is dealing with the actual articles and describing them. Then Mr Buck at page 215, Question 3273, is asked: "Apart from that, no meaning at all?—No meaning at all except it is a solid which may occasionally go liquid." Of course, again, that is referring to the article itself—"Has 'tablet' any defined meaning in your mind, I wonder?—Yes. Q. What does 'tablet' mean?—I should think a tablet might be anything from a small compressed thing like this to a tablet of marble or anything else." Then we have Mr. Davison on page 223, Question 3432: "I asked you whether, apart from Messrs. Burroughs & Wellcome, it has got any meaning to your mind?—That is the meaning, as I have told you, that it conveys to my mind? Q. And nothing else?—No, nothing else. Q. Have you never considered the meaning of the word 'tabloid'?—That is the only meaning it ever had to my mind. Q. It does imply compression?—Yes, I think that is the only meaning I ever attached to it, that it implies compression."

My Lord, those are the references that I wished to make, and I leave the case now in your Lordship's hands, asking you to, as far as possible, deal with it as though it were an Appeal in 1884 from the Comptroller with the knowledge then existing in the world, on the ground that it was not a fancy word or a word in common use.

(Adjourned for a short time.)

Mr. R. J. PARKER : My Lord, there are one or two points which I am asked on behalf of the Comptroller to call your Lordship's attention to. The first is with reference to what Mr. Neville said in opening. I think now from what I have heard of his speech to your Lordship that he admits fully that the crucial date in considering a question of this sort is the date of the registration, and that what has happened since is really, as a matter of fact, irrelevant. That is the view which has always been taken by the Office, and the view which has hitherto been confirmed by the decisions in the Court of Appeal which are really binding, I think, on your Lordship in this respect. Mr. Neville also referred in opening to the practice in the Office of refusing to register under the Act of 1888 marks which had already been registered under the Act of 1883. That is so, my Lord. If a mark is once on the register under the earlier Act, the Comptroller refuses to register it again under the later Act except on the term that it is taken off under the earlier Act. Of course, my Lord, you may have cases in which the registration might be possible under the Act of 1888 where the registration was wrong under the Act of 1883. It is not admitted in the office that a man can maintain the validity of the earlier registration and at the same time ask for a registration under the later Act. That is the practice in the office. Those are the only two points of practice which have been mentioned in the case. Nov. 27, 1903

With regard to the application for removal generally, I think it is in some respects a misfortune in these cases that the motion and the action for passing off come on together, because the nature of the evidence is naturally very different and one has to really distinguish and bear in mind that the date at which you are considering the question of passing off is the date on which the acts complained of are done. On the other hand, with regard to the removal, it has reference to the earlier date, the date of registration. I should like also to say this with regard to what has been said by Counsel on either side, that, of course, a trade mark at common law, or rather, I think, it was rather put as an equitable doctrine of the Court—but I use the expression, common law, to distinguish it from the statutory trade mark, the essence of which was that you distinguished the goods of a particular manufacturer from the goods of all other manufacturers, and the crucial thing to prove in the old action for infringement of trade mark was that at the time the acts complained of were committed, the marks so used did have that effect and did distinguish the goods of the complainant from the goods of the persons who were said to have infringed his mark. It is different under the statutory trade mark. The sole question there is not whether the mark still distinguishes the goods of a particular manufacturer, but whether anything has been done in infringement of the mark which is rightly on the register. And the difference is extremely important in this connection, that under the old system before the statutory registration it was to the advantage of everybody to choose a mark which would at the present time and would naturally in the future distinguish their goods from the goods of all others, but under the statutory trade mark I think it is rather conceded that the best sort of trade mark

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to register is a trade mark which in its initial stages was said to distinguish the goods of a manufacturer from all other goods, but which will be a popular one as soon as possible and become identified with the goods themselves. The real value of a trade mark now has become a kind of monopoly value. Your Lordship has it illustrated in the recent cases like "Vaseline." Your Lordship remembers that "Vaseline" now is a word known to everybody and denotes a particular substance. It is in all the dictionaries and denotes a kind of petroleum jelly, but originally in that case it was a word which was invented and registered and used as a trade mark before 1875 and registered under the Act of 1875, and the change for denoting the goods of a particular manufacturer to denoting the particular substance has not affected the validity of the mark according to the decision of the Court of Appeal. Therefore you get what I think my learned friend, Mr. Walter, said was a monopoly value, which is an accidental result of the Trade Mark Acts and has nothing to do with trade mark at Common Law. The very fact that you have that monopoly value would have been fatal in the old times to the Common Law action for infringement.

Mr. Justice BYRNE: A good mark originally registered, if it has been adopted into the language for other purposes, does not invalidate the trade mark.

Mr. R. J. PARKER: No; I rather conceive where manufacturers advertise a trade mark they hope that the trade mark is a thing which will in the course of time become identified with the goods. Those considerations are a little bit important—not perhaps directly with regard to what your Lordship has to decide, but very important to the Comptroller in exercising a discretion which he may have and which he is called upon to exercise under the Statute; and in part of the exercise of that discretion nowadays, if it was a question of putting on a word like "tabloid" it would be almost impossible to do so after the evidence your Lordship has heard. It does not affect the question whether it was on properly *ab initio*.

Mr. Justice BYRNE: If rightly on, then nothing has taken place since which would entitle them to have it off.

Mr. R. J. PARKER: I was a little bit struck with the last quotation from the evidence which Mr. Neville read, which was that a "tabloid" must be a tablet.

Mr. Justice BYRNE: Yes, one witness had a notion that "tabloid" was generic.

Mr. R. J. PARKER: Evidence of that sort in 1884, or whenever the date was when it came before the Comptroller, might very materially affect the consideration whether the mark should be allowed on, but there is no evidence whether it was so then. That is what is said now. The only other point, I think, which I might mention to your Lordship is this, that I think on the true construction of that section in the Act of 1883 you must not only have a fancy word, but it must be a distinctive fancy word.

Mr. Justice BYRNE: I think that is the grammatical construction—it has been so treated in former cases.

Mr. R. J. PARKER: There is a variation in the Act of 1888; I do

not think the word " distinctive " is used with regard to invented words, or with regard to words not having reference to the nature or quality of the goods, but the essence of a trade mark is that it should be distinctive of the goods of the particular manufacturer, and in construing the earlier Act I submit to your Lordship that the true construction is that the fancy word must be a distinctive fancy word. I think that is really what has been laid down in most of the cases.

Mr. Justice BYRNE : And that it need not necessarily be an invented word to be a fancy word ; it is difficult to find.

Mr. R. J. PARKER : It need not necessarily be that.

Mr. Justice BYRNE : It is strong evidence if you find it is invented. That goes a long way.

Mr. R. J. PARKER : Yes. Of course in considering whether a mark is distinctive or not, the existence in popular language of other words which are nearly similar, or which have syllables in common, is material. What you want to avoid is confusion in the minds of the public between two things. It ceases to be distinctive if and so far as the public might confuse the word with another word which would not denote the goods of that particular manufacturer.

Mr. Justice BYRNE: There is one other point. Did you hear Mr. Neville's argument on the question of registration in a particular class ?

Mr. R. J. PARKER : Yes, there was that. With regard to that it is not necessary when you apply for the registration of a trade mark to register it in a whole class. You may choose particular goods in that class. Since I heard Mr. Neville's argument I have not seen the Registrar, but my impression is that there are cases where the Registrar has suggested, when an application has been made, that this might be a proper application if limited by the exclusion of certain sorts of goods. It arises sometimes in this way : that there is a notice of opposition because somebody has a rival trade mark, or if he has not a trade mark uses it as a common law trade mark somewhat resembling the word which is on the register. If that is the case it is often suggested with regard to the goods in connection with which that rival mark, if I may use the expression, is used, that they shall be excluded from the new registration. For instance, if you apply for a mark for food substances to be registered you will find a particular class of food substances, say cereals, are already in existence, and the Registrar may say there is no objection to this mark except for that fact ; so that if you limit it to certain goods in that class the objection will go.

Mr. Justice BYRNE : Then in the application of the Act and considering whether it is a distinctive fancy word, if the registration is in respect of a whole class, does not the person registering take it upon himself to say that this is a distinctive word in respect of all classes of goods ?

Mr. R. J. PARKER: I think he does. You might remove the mark on the ground that it was not distinctive with regard to goods not exhausting the whole class but a portion of them.

Mr. Justice BYRNE : It is rather curious. Suppose you register

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as in Class 3 here : " Chemical substances for use for medicine and pharmacy." In considering whether that is a fancy word, I must consider whether that is a fancy word in reference to any of the substances we are discussing about.

Mr. R. J. PARKER : I think that would be so. I think that would be a fair way of looking at it. A

Mr. Justice BYRNE : There was some passage from one of the Patent Office Reports, which of course contains a great deal which never comes under the supervision of judges at all. There was a passage referred to in Lord Herschell's Judgment. It was never put forward as suggesting that the question I have to ask myself is whether quite independently of the article to which it is to be applied—— B

Mr. R. J. PARKER : I know the passage to which your Lordship alludes, and which was read, but of course that is a dictum of Lord Herschell, which is not quite consistent with the run of authorities which have immediately preceded it, because there they considered it with regard to the goods. It is not a question whether it is a fancy word itself. C

Mr. Justice BYRNE : Independently of the goods to which it is intended to be applied.

Mr. R. J. PARKER : No, not independently—in connection with the goods to which it is to be applied. Of course the application in that case, I think, was for the registration of the word " solio " in a very limited class : namely, photographic paper. D

Mr. Justice BYRNE : Yes, it was. There might be some words so ridiculous that they would have no application to anything at all. E

Mr. R. J. PARKER : Yes, my Lord. One might conceive that a fancy word might be a fancy word with regard to one class of goods and descriptive with regard to another.

Mr. Justice BYRNE : And might be very good with regard to one class of goods ? F

Mr. R. J. PARKER : Yes. Of course I have never been able to see myself that the classes in which the goods are divided for the purpose of the trade mark really have any logical consistency.

Mr. Justice BYRNE : It would fall very well on you to suggest legislative amendment. G

Mr. R. J. PARKER : I think those are all the points which have arisen on which I need say anything, my Lord.

Mr. WALTER : If your Lordship pleases, I am relieved of a great deal on the question of the motion for rectification of the trade mark, by the fact that I do not think your Lordship has been treated to any new law, and by the fact that I think I had brought before your Lordship all the cases which were useful to bring before the Court, as showing what is the true manner in which this question is to be decided. H

I will deal with the case as put by my friend Mr. Neville, in the order in which he has put it. He stated, and I think correctly, and I think it was the view which I put before your Lordship, that the question is a question which is to be decided at the date of registration, and at no other date. I have never attempted to say that your Lordship has to test the validity of the I

registration of the word "tabloid" at a date other than the date at which it was registered. But my friend then went on to say that the question before your Lordship for decision was: Is the word 'tabloid' a distinctive fancy word? With submission, that is not the question which your Lordship has to try.

Mr. Justice BYRNE: "Was it a distinctive word?"

Mr. WALTER: Yes. "Was it a distinctive fancy word"? That is part of the question, it is not the whole. If the direction to the jury were given in those terms, the direction would be contrary to the whole of the authorities upon this question. What it comes to is this: Was it a distinctive fancy word as applied to the goods for which it was intended to be used? My Lord, I am not going to trouble your Lordship again with the authorities. Your Lordship referred to them again when Mr. Neville was putting his proposition before your Lordship. Your Lordship called attention to the Judgment of Lord Justice Lopes and to the Judgment of Lord Justice Lindley, and I think in both those cases to which I called your Lordship's attention, that is the Melrose case and the Bovril case, there has never been any question arising on that: therefore, I say that as to my friend's first proposition: Was it a distinctive fancy word? That is not sufficient. Was it a distinctive fancy word as applied to the particular goods? That brings me also to something which my friend, Mr. Parker, on behalf of the office, has just stated to your Lordship. User, my Lord, is essential for the existence of the trade mark. It is a sufficient ground to strike a trade mark off the register that it has never been used. That is one of the common grounds. The only user in relation to this trade mark is that which has been proved before your Lordship, namely, user in connection with particular classes of goods to which it has been consistently applied, namely, compressed solids in what I, without begging the question, would call a tabloid form. My friend, upon this part of the case, referred to the Bovril Judgment as supporting him. My Lord, the passage he read is, with submission, pregnant with meaning against him. The passage he read was at page 606 of the Judgment of Lord Justice Lindley, where he says: "To my mind it is not descriptive, notwithstanding Mr. Bower's very ingenious argument. He tries to make it out to be a descriptive word, not by taking the word, but by taking a little bit of it, and he says that because 'bov' may have some relation, and does have some relation, to 'ox,' therefore, 'Bovril' describes—what? I do not see that it describes anything at all. Does it cease to be a fancy word not in common use? If it is so descriptive as to cease to be a fancy word not in common use, well and good; but if tne description is only to be got at by the ingenious suggestion that 'Bov' must mean 'ox,' we must ask what the whole word means. No one knows—no one ever heard of it; I have not the slightest idea what 'Bovril' really means as a word." That was a perfectly true statement as regards Bovril. What did "Bovril" mean? Not on the question of what "Bovril" had come to mean as a substance at that date, but what "Bovril" did mean. It never had a meaning at all of any kind or description. "Tabloid" by the very evidence which has been proved before

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your Lordship has a meaning as apart from a particular substance, has now, at all events, a meaning apart from a particular person's goods. "Bovril" never had any meaning except an associated meaning which had come by the lapse of years, because the trade mark had been applied to the particular substance which A was known to the public by the name of "Bovril," and which, therefore, became a name; but Bovril had no meaning, and has now no meaning, except a meaning which has been acquired by its association—not with a class of goods defined by shape, defined by physical condition, but defined solely as being made by the Bovril Company. It has no meaning other- B wise. There is no meaning in the word "Bovril." "Bovril" has acquired, as I say, a meaning as the name of a particular substance made by the Bovril Company—but "Bovril" has no other meaning. The user of the word "tabloid" proved before your Lordship has shown conclusively that—at all events I will take it at the present time—a large C number of people use "tabloid" in a sense not meaning the substance or the goods of a particular person, but applied generally to goods of a particular class. And why? Because the word "tabloid" has meaning. You do not have to go back to "tab," as they attempted to do in Bovril. Let us test the question in another way. Assume "tabloid" had D never been a trade mark at all, assume it had never been attempted to be appropriated as a trade name, "tabloid" is a word which, as I said before, naturally takes its place in the English language. "Bovril" has not got into any dictionary. "Bovril" means nothing. There is no termination "vril" or "ril"; there is no E such known termination. It is not a diminutive; it is not a manner in which persons enriching the English language have been accustomed to create a variant of a pre-existing word. There is no such thing. "Bovril" is one of the finest examples of a word of the type which my friend Mr. Parker referred to, that possesses its inherent virtue of becoming the F name of a particular substance, but, as I say, beyond its name of a particular substance it has no connection at all. I say the very passage to which my friend refers there is absolutely against him in his attempt to support the word "tabloid."

Mr. Justice BYRNE: Then you say that the word "tabloid" is a G natural English word, having a meaning apart from these goods?

Mr. WALTER: Absolutely.

Mr. Justice BYRNE: Now what is the exact meaning, once more?

Mr. WALTER: The word "tabloid," my Lord, is a variant of the nature of a table or tablet. H

Mr. Justice BYRNE: Which?

Mr. WALTER: I care not which, my Lord. I do not mind which. I am coming to that in another part, but I may just as conveniently take it now. One wants to see what the meaning of "tablet" is. "Et" is the English form of the French diminutive "ette." It is a diminutive used I constantly in the English language and in the French language, too. In the French language it is "ette," in the English language it is "et." It is a known diminutive. It has no other meaning, when "et" is the termination of an English word, other than a diminutive. Tablet is a

little table, so used, and the word was so given to the little medicinal discs. The French "tablette," if your Lordship looks in the French dictionary, is the French technical term for these little discs, and "tablette" is only a little table. If one goes back into the history of these words to see what is their meaning, the tendency of all words, or nearly all words, is to enrich a meaning. What was the meaning of a word at a particular period of history is not its meaning at another period of history, and therefore you can lay down no line, and the birth of words arises from over richness in the meaning of an old word, and the diminuitives and variants which arise in a language arise from the desire of persons to get a shade of meaning different from what had gone before. "Oid" is one of those, used always in the sense of the shape of, or of the nature of. I know of no other use of the word "oid." "Rhombus"—"rhomboid."

Mr. Justice BYRNE: Was a peppermint lozenge, which was not a lozenge within its original sense, a tablet or an acid drop or both.

Mr. WALTER: I do not know. I do not think "tablet" appertains so much to the sweetshop as to the dispensing room. "Tablet" did appertain to the sweetshop to a certain extent I know, because your Lordship recalled association of early youth in the matter of the acid tablets. I remember that. Perhaps I was wrong in saying it, but I think originally "tablet" was a term more closely associated with the medical than with the other branches of food supply.

Mr. Justice BYRNE: Do you recall that? Can you recollect any medical tablets of your youth?

Mr. WALTER: I think I have been associated with chlorate of potash—I remember them as the old tablets—Burroughs, Wellcome & Co.'s. I was trying to find if I had any of the old boxes, but I cannot find them. Tablets I knew perfectly well in the early days.

Mr. Justice BYRNE: There are, of course, the tablets of compressed vegetables?

Mr. WALTER: Yes, and my friend, Mr. Gray, says there were paregoric tablets. I do not recollect those, but I have no doubt there were. At any rate, your Lordship has it in evidence in this case, that at the date we are chiefly concerned with, namely, at the date "tabloid" was registered, "tablet" was a perfectly well-known thing and had been applied to goods of precisely the same kind and of the same shape the double convex. For all Wyeth's tablets this picture and everything are exactly the same as the "tabloid." It is true that "tabloid" is a better word, a more appropriate word to articles of that description, than "tablet."

Mr. Justice BYRNE: Why?

Mr. WALTER: Because a tablet has more, in its true definition, a the sense of flatness, while "tabloid" is rather "of the nature of, though not strictly a little table." It is the more appropriate word. So, my Lord, I say the word not only had a meaning, but it was the appropriate word at the time. My friend, Mr. Neville, referred again to the Solio Judgment, and he quoted not from the Judgment, but from some *obiter* in the course of the argument, some words that fell from Lord Herschell. As your

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Lordship pointed out—and I am not going to trouble you again with it—it is not to be found in the Judgment; in fact there is no attempt in the Judgment in the Solio case to differ from the Court of Appeal in the Bovril case and in the Melrose case; there is no attempt to differ from the way in which they would direct themselves or a Jury, namely, that you have to consider the question of "distinctive" as applied to articles in respect of which the trade mark is to be used. That runs all through the Solio Judgment. The Soho Judgment says that you cannot by merely a variation of a word which otherwise would be descriptive make that into an invented word though it then first saw the light, and get a good invented word, if in fact it is descriptive of the article to which it has to be applied. That goes right through the Judgment in the Solio case. I called your Lordship's attention to these passages, so I will not trouble the Court again by referring to them. Then, says Mr. Neville, what you use the trade mark for has nothing to do with it. I say that is dead in the teeth of every decision which has been given on the Act. The Bovril case and the Melrose case are absolutely against it. Then he refers to the Comptroller, and, as I gather, his argument was this: "The Comptroller might have asked me what I should use it for and was I bound to tell him? I was not bound to tell him in the least." The Comptroller does not ask, unless by reason of opposition—his attention is called to the state of the marks in use in a particular trade, and then, as my friend Mr. Parker has stated, he often suggests that instead of applying for a whole class it shall be limited to particular goods in a class so that no confusion shall arise between goods. Then my friend uses another argument. He says this word must be a good word, because it was registered with "tablet" already on the file, and therefore it must clearly be a distinctive word from "tablet." Now that is founded on an absolute fallacy. He registered "tabloids" after "tabloid"—one of the marks which they have registered and which we are being sued for infringing is "tabloids." The Comptroller, where marks are applied for by the same firm, as there can be no possible confusion between the goods of "A" and the goods of "A," allows marks of that kind to go on. Therefore, there is nothing to be drawn from the registration of "tabloid" after "tablet" had been registered, any more than the argument could have been used: "But the Comptroller clearly distinguished tabloids from tabloid and allowed the word to be registered thinking it was a distinctive word."

Mr. LEVETT: I think my friend is wrong. The registration of "tabloid" is with the box round it.

Mr. WALTER: There is no disclaimer, as my friend knows would have been the case, of the word "tabloids" if the Comptroller had conceived that the word was to be confused with other words on the register. If I had been the owner of "tabloid," and he had applied to register "tabloids," he would never have got it registered at all.

Upon the question as to whether or not the word is descriptive I am not going to trouble your Lordship again by calling attention to the best evidence which can be given. At the moment of its birth it was used

descriptively by the applicant; it was used (whilst the trade-mark "tablet" was running under which he was threatening the world) descriptively, and in no other way. It had its meaning, and the very first user of the word tabloid by the Applicant was descriptively.

Mr. Justice BYRNE: Then you must distinguish it. Suppose it to be common ground that it was used descriptively—descriptively in what sense?

Mr. WALTER: "Tabloid shape." "This is a tabloid"—with a picture of it. Not, "My goods of this shape are distinguished from other goods because they are tabloids"; but, "Look at my tabloid. I show you what a tabloid is. I tell you it is a compressed drug in a convenient form"—the picture being the same picture as his "tablet" which he had previously advertised in the same way. "This is a tabloid."

Now, my Lord, how can I describe the next branch of the argument of my learned friend—I can only describe it as evidence of intelligent experience. My learned friend says—Look, I have found 12 gentlemen professing to be intelligent men, and appearing to have some status in the world—I have found these 12 gentlemen who cannot understand what the word "tabloid" means; and it cannot possibly have a meaning if 12 such intelligent witnesses come before your Lordship and say it has not a meaning.

Now, my Lord, is that an argument of much weight? Those gentlemen at the same time tell your Lordship that they are so saturated with the literature of Messrs. Burroughs & Wellcome that they cannot divorce in their minds the term "tabloid" and "Messrs. Burroughs, Wellcome & Co." That which is hidden from the wise the babes seem to understand. All and several of 400 people who wrote for tablets and enclosed advertisements of tablets applied for them under the term "tabloids." Of course I cannot cross-examine your Lordship so as to ascertain precisely the form in which your Lordship became acquainted with the term "tabloid."

Mr. Justice BYRNE: No, Mr. Walter, I am going to act upon the evidence.

Mr. WALTER: Quite so, my Lord; but I was going to ask your Lordship to look upon yourself as a member of the public whose association with the term "tabloid" was such that, at all events, it had a very definite idea in your Lordship's mind, and I do not think that in the early days your Lordship associated it with anything except the general idea of form and shape and things of that kind. I say such use of evidence is unheard of in a trade mark case. To parade gentlemen with titles attached to their names, holding positions, doubtless, of honour, and who are, I daresay, very estimable persons—to parade those gentlemen before your Lordship, and to hold them up and say: Because these twelve good men and true do not know the meaning of the word "tabloid," that therefore "tabloid" cannot have any meaning—my Lord, I really will not say any more, except to call your Lordship's attention to the evidence of one gentleman on page 207 of the Shorthand Notes, who is vouched for as being one of this quality, and

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who has already attracted the attention of my friend, Mr. Parker. Oh, I see, my Lord, he is not one of the mighty, he is only a mere chemist. But when we get down to him he does say at Question 3102, that : " 'tabloid"' and 'tablet' have nothing in common?—They are very much alike, but it does not follow that tablets are tabloids. A tabloid must be a tablet." Well, my Lord, my learned friend may use that as he likes, but it does seem a pregnant statement, at any rate, that " tabloid " had a clear meaning, and that it was a tablet. Of course, it was. There is the answer. A " tabloid " is a tablet. That is really the answer to the whole case.

Then the next way in which my learned friend dealt with the trade mark case was that he said this : 18 years is a long time, and for 18 years my mark has been on the register ; during that period I have enjoyed my trade mark rights without let or hindrance, and, therefore, my trade mark is a good trade mark. My Lord, that again is an absolute fallacy. The answer to it is that Messrs. Burroughs & Wellcome are possessed of much money. It costs much money to attack Messsrs. Burroughs & Wellcome, and therefore they have not been attacked. That, I submit, does away with the 18 years' argument. My Lord, now they have found someone, but really I hardly like to pursue this——

Mr. Justice BYRNE : No, you mean that—no " village Hampden " has arisen for 18 years ?

Mr. WALTER : That is so, my Lord—no village Hampden has arisen for 18 years. I have to deal with the arguments as they are put forward, and I hope they were put forward seriously, but I really hardly like to reply to them, but it has never yet been said in a trade mark case that mere lapse of time is any evidence as to whether or not a trade mark is a good one.

Mr. Justice BYRNE : No, but it has been said that every allowance has to be made in favour of it ; Lord Justice Romer said so, and 18 years is a long lapse of time.

Mr. WALTER : In that sense I quite agree. As what I may call an appeal to the humanities, but as to testing the question as to whether or not they are entitled to the word " tabloid "—well, I should put it in this way that it is rather an argument one would address to a Jury than to a Judge.

Mr. Justice BYRNE : You must remember that I have to act in two capacities.

Mr. WALTER : My Lord, I do not want to be misunderstood ; I quite agree that to this extent it has weight—that one must look closely ; not that one would not have to do so in every case ; and the fact that there has been a long time is an element in that sense, but no further.

Then another argument that was used that struck me as curious was that the public generally were ignorant of Greek, I think we had some 42 millions of inhabitants of these isles referred to. I do not know, and I do not mind, whether anyone knew what the derivation of " oid " was. That is not the question. " Oid " is an English termination, and it has been so for years and years, in fact for centuries. I could trace it back into the early part of the 17th century, but " oid," my Lord, was perfectly well known.

Mr. Justice BYRNE : Apropos of that, I think I was hasty to speak of "table-oid" yesterday. I am not quite sure about that. Nov. 27, 1903

Mr. WALTER : Now, my Lord, the next point taken against me was this : Says my learned friend, Mr. Neville, I argue that a trade mark is of the nature of a monopoly right, and a monopoly right given over a patent gives no right to the use of the name by which I call the patented article, or to any monopoly right in that after the date. Says Mr. Neville a monopoly by patent and a monopoly by trade mark are two totally different things. That is not the question at all, and neither was that the way in which I used the argument. I have never suggested that monopoly by patent and monopoly by trade mark were identical, but what I did say was that under a monopoly granted by a patent during the enjoyment of which monopoly I have used the name I cannot maintain my monopoly after the expiration of my period of patent protection by an exclusive right to the name. I say that under trade mark in the particular case we are considering the comparisons are identical. This is a word trade mark. He has for 18 years had a monopoly of a particular word by the registration of that word, and the monopoly thereby granted to him was under the Trade Marks Acts. I say, as I said then, that in considering the question as to the use of the word, particularly in its bearing upon the passing off part of the case, one must look at the fact that during that period he had a legal monopoly right to restrain the use of that word. I did not use or attempt to use the argument further than that. What I say is that in weighing the evidence as to repute there must be weight given to the undoubtedly monopoly claim, and to the fact that the cabman was driving over the crossing, and that I did not care to walk across, and therefore that you cannot attribute solely to reputation, but largely, if not altogether, to monopoly right, the manner in which the world has not trodden on his paths. That is all that I put. Therefore, I say, my Lord, that in that argument which he used he had misconceived or misunderstood my argument, and that is the way I deal with it.

Then he went on to deal with it being somewhat ungracious on my part on behalf of my clients to look a gift horse in the mouth. He had been the donor. but of course the gift horse must be taken with all its defects, and I say one of its defects was so far as my friend is concerned——

Mr. Justice BYRNE : He gave a horse to the public and he says you are never to ride it as long as I want to ride it.

Mr. WALTER : That is so. You must never ride it as long as I want to ride it ; and I say that his sole prohibition to me was that it was registered as his trade mark. It all comes back entirely to the question of the meaning of the word in its inception, and I do not know that one can carry it further than that.

Then the peroration of my friend's case as I gathered it was really an *ad misericordiam* appeal. We have been on the register such a long time we ought not to come off. Of course, that is no argument at all.

Those are the whole of the points, my Lord. I may have failed to grasp some of the points which were put by my learned friend, but I took

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a careful note as far as I could of the words. There is only one other thing. He instanced the word "electric" as a word which had been struck off as being descriptive. He said: "Of course the word 'electric' was a word of so clear a meaning that it must come off." Well, I am glad to hear that someone understands what the meaning of the word "electric" is. It is a word that I should have thought had about as indefinite a meaning as one could well find, and as applied to velvet—what was 'electric velvet'?"

Mr. Justice BYRNE: That is very curious. Of course I am very familiar with that case In the first electric machine I knew anything about you did employ a band of velvet to rub a cylinder round. There is some sort of association of notion between the two things. There are all kinds of associations which occur to one, and do not occur to another, because you begin to puzzle yourself, how was this given that name, and one man strikes it in one way and one in another.

Mr. WALTER: I can tell your Lordship why it was and why it was not. There is a fashion, and they thought that electric velvet had got something to do with electricity, and so on, and the Court said: You are taking a word that may or may not be descriptive; it may be descriptive with regard to particular articles; we cannot say it is non-descriptive. Why I say that is because the word "electric" was chosen by my learned friend as being a word of so clear a definition. I say that rather in answer to the questions which your Lordship has put to me, What do I mean by "tabloid?" What do I mean by "tablet?" I say that with regard to those words the meaning is far more wide than the word "electric" as applied to velveteen, and "electroid" as applied to—I forget what it was.

Mr. Justice BYRNE: "Electroid" was applied to the paint of a ship?

Mr. WALTER: Yes. Those words have both been held bad, and I ask your Lordship to say that at the date of the registration of these marks they were not within the meaning of the 64th section of the Act of 1883 "distinctive fancy words not in common use." On those grounds I ask your Lordship to remove the marks from the register with the usual result.

Mr. Justice BYRNE: I will give Judgment shortly. Monday week probably.

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
27th November, 1903.

BEFORE
MR. JUSTICE BYRNE.

Burroughs, Wellcome & Co.

—v.—

Thompson & Capper.

IN THE MATTER OF THE TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER OF THE PATENTS DESIGNS AND TRADE MARKS' ACTS, 1883-1888.

SEVENTH DAY.

MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Plaintiffs' Solicitors

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Defendants' Solicitors.

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Tel. No. 1077 Holborn.

C.J.S.T.

(8)

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
Monday, December 14th, 1903.

BEFORE—
MR. JUSTICE BYRNE.

BURROUGHS, WELLCOME & CO.

— v.—

THOMPSON & CAPPER.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY, appeared on behalf of the Plaintiffs (instructed by Messrs. MARKBY, STEWART & Co.).

Mr. A. J. WALTER, and Mr. J. H. GRAY, appeared on behalf of the Defendants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

JUDGMENT.

Dec. 14, 1903 — Judgment.

Mr. Justice BYRNE: 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
A 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. In and previously to the month of March 1884 the Plaintiff firm were manufacturing and

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selling compressed drugs in a solid form and of a lenticular or bi convex shape.

On the 14th March 1884 they registered in Class 3 in respect of substances not included in Class 1 used in medicine and pharmacy the word "tabloid" and on the 27th January 1885, they registered in the same class the representation of the top of a box with the word "tabloids" upon it. It was explained that this latter registration was in order to be able to register in Germany, where such registration would not be granted except in connection with a device and previous registration in England. These registrations have been renewed and are in force. The Plaintiffs have continuously made and sold compressed drugs ever since the date of the original registration of the word "tabloid." These drugs have always been made and sold of the original shape and size, but they have also been sold of various other sizes and of differing shapes, chiefly, however of a form more or less bi-convex. The list of drugs and compounds of drugs so made and sold has been extended from time to time, but the Plaintiffs have always sold their solid compressed drugs in connection with the word "tabloid" or "tabloids." The registration was under the Act of 1883, and having regard to the terms of Section 64 sub-Section 1c the question is whether or not the word "tabloid" was a distinctive fancy word not in common use at the date of registration; namely, the 14th March, 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 I have 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. I find in the 1848 Quarto Edition of Johnson's Dictionary the definition of tablet is:—First: "A small level surface." Secondly "A medicine in a square form." And then there is a quotation from Bacon: "It hath been anciently in use to wear tablets of arsenick or preservatives against the plague as they draw the venom to them from the spirits."

In the Imperial Dictionary of 1868, I find this definition (No. 4) of "tablet." "A medicine in a square form. Tablets of arsenic were formerly worn as a preservative against the plague. A solid kind of electuary or confection made of dry ingredients usually with sugar and formed into little flat squares called also lozenge and troche, also applied to anything made up in a flat square shape as a tablet of soap." The word "tablet" had also been used to denote compressed drugs made up in the bi-convex shape in question by the Plaintiff firm in connection with Wyeth's tablets and by some other persons. The Plaintiff firm had registered the word "tablet" for the same class, intending to use it as their trade-mark, but, finding that it could not be sustained, Mr. Wellcome set about finding a new word, and 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.

The case of the trade mark "Bovril" before the Court of Appeal (in 1896, 2 Chancery Division, page 600), relieves me from a close examination of earlier cases, and gives me a guide in endeavouring to determine whether or not "tabloid" was a fancy word. The earlier leading cases of Van Duzer's Trade Mark and Leaf's Trade Mark (34 Chancery Division, page 623), were cases in which, as pointed out by Lord Lindley in the Bovril Case, a coined word was not under consideration at all, but ordinary English words. "Where," says Lord Lindley, "you have got a fanciful use of a known word you must have a word which is obviously non descriptive." At page 606 he says: "But I agree that a word which describes the article will not do. To my mind it is not descriptive, notwithstanding Mr. Bowers' very ingenious argument. He tries to make it out to be a descriptive word, not by taking the word, but a little bit of it and he says that because 'Bov' may have some relation and does have some relation to 'Ox,' therefore 'Bovril' describes what? I do not see that it describes anything at all." I think I also get this from the Bovril case, that it is not necessary that the word should be absolutely unsuggestive. The word "Bovril" was suggestive of "Ox," but as a whole was held not to be descriptive.

The argument in the present case for the Applicants was: There is a word to be dealt with compounded of "table" or "tablet," with a common suffix "oid." To the last Mr. Walter, with his accustomed skill, would not pin himself to one or the other. There were, he says, the words "tabellae," "table," "tablet" in common use, and "tabloid" must be taken from part of one or other of them, and the rest of the word is made up by adding a common suffix "oid," meaning "in the form of" or "like" or "allied to," used in a great many English words and especially in connection with scientific nomenclature, and though part of the root or suggesting word is left out the word "tabloid" means something like or allied to things denoted by one or other of the old words. On the other hand it was forcibly urged that the only attribute common to the things denoted by the words "table" and "tablet" is the suggestion of flatness on one side or other, or on both sides of the object without any notion of convexity. Suppose "tablet" be the word supposed to have the common suffix appended it is to be noticed that the new word is not "tabletoid" but "tabloid," a possible but not the most obvious formation; while if "table." be the word, though "tabloid" would probably be a natural way of adding the suffix by analogy to other words constructed in a similar form, the word so constructed would mean allied, not to a "tablet," but to a "table," but though solid drugs in certain forms were known as "tabellae" or "tabulae," there is nothing that I can find to denote convexity or compression in the word.

I think the case is near the line, but treating it as a matter of fact in the particular case, 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.

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I agree that there is a suggestion or atmosphere of description about the word as then used, but I do not think that it can be said to have been other than a "fancy word" as applied to goods in the class in which it was registered. 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, and 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. To every medical practitioner, to every chemist and qualified chemist's assistant, and to every known nurse in the Empire diaries are and have for many years been sent annually, in which Messrs. Burroughs & Wellcome's goods are referred to and denoted as "tabloid" or "tabloids." 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. All that could be done by owners of a trade name to protect it has been done. The Plaintiff firm has been vigilant even to the extent of persuading compilers of modern dictionaries to correct, and to undertake to correct, their definitions of the word "tabloid."

There is one pecularity in the case I must mention. The word "tabloid" has become so well known and appreciated in consequence of the use of it by the Plaintiffs in connection with their compressed drugs that I think it has acquired a secondary sense in which it has been used and may legitimately be used so long as it does not interfere with the Plaintiffs' trade rights. I think the word has been so applied generally with reference to the notion of a compressed form or dose of anything, from literary education to household dwellings, and sometimes also perhaps as denoting a bi-convex form of drug, and various works, including numbers of "Punch," have been referred to shewing such use of the word.

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. A large number have been produced, not one of which uses the word in reference to the goods of anyone except the Plaintiffs, and all of which refer to the Plaintiffs' goods in connection with the words "tabloid" or "tabloids."

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 & W," but this is by way of extra caution to ensure against the substitution of drugs of a less reliable or lower standard than that of those prepared by the Plaintiffs.

I quite agree that there is a considerable section of the public knowing and using the drugs who have not noticed or observed the distinction between "tablets," under which name a very large number of compressed drugs of bi-convex shape are and have for a long time past been sold, and "tabloids" so as to identify the latter with the manufacture of the Plaintiffs. When given in pursuance of a prescription the "tabloids" are often, perhaps generally, so put up as not to disclose the name of the maker. This, I suppose, is to protect the chemist and to entitle him to charge as for medicine made up to prescription. Besides this, although the Plaintiffs supply their goods to chemists in their own small bottles and tin boxes to be retailed, they sometimes supply them in bulk, and then the chemists may, and sometimes do, put them into small bottles and sell them in connection with their own name, with labels calling them "tablets," not "tabloids," and supplying them in answer to a request for either "tablets" or "tabloids." Though this is not complained of, it must have some effect in preventing the retail customer from having his attention so pointedly called to the fact that the words "tabloid" and "tabloids" denote the goods of a particular firm as would be the case if the "tabloids" were always retailed under that denomination in connection with the Plaintiffs' firm name or initials.

Nevertheless, though I have evidence of mistakes in ordering goods as "tabloids" when the goods of other makers are really wanted, I consider that the evidence does show, again speaking generally, that members of the public, when they ask for "tabloids," mean and expect to get the goods of the Plaintiffs.

Upon this part of the case I think that the Plaintiffs have discharged the obligation referred to by Lord Herschell in "The Two D" case (Leahy Kelly and Leahy v. Glover, 10 Reports of Patents Cases, at page 155) when he says that "the foundation of a passing-off case is that the party alleging it should prove in the first instance that any name which he claims as his trade name has been so extensively used in connection with his manufacture or with the goods which he sells, that his goods have come to be known in the market by that name, that anyone using that name would intend to refer to his goods, and that anyone to whom the name was used would understand that his goods were referred to."

The Defendants are manufacturing and retail chemists carrying on a large business. They have businesses at several different places, including two shops in Deansgate and Piccadilly, Manchester. They have sold in response to orders for "tabloids" goods not of the manufacture of the Plaintiffs' firm. Until about the middle of last year the great bulk of the compressed drugs sold by the Defendants at their Manchester shops were

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—
Judgment.

of the Plaintiffs' manufacture. The Defendants and all their assistants knew that "tabloids" denoted the Plaintiffs' goods. Since the date in question the Defendants have stocked compressed drugs of other makers, and they have sold in bottles labelled "tablets" in connection with their own name goods of the Plaintiffs as well as goods of other manufacture. The bottles and labels are not distinguishable and they are as a rule kept in one glass case, though it is said that they are or ought to be in different sides of it. It has been proved that, on the 10th of September, 1902, the Defendants supplied to Winifred Davies in fulfilment of a prescription "Tabloid potassii chlorate, B. W. & Co." things which were not the Plaintiffs'. On the 12th of September, 1902, Mr. Thomas Smith was supplied with "cascara sagrada" in similar shape and form to the Plaintiffs' tabloids, in response to a request for "cascara sagrada tabloids," which were described on a list shewn to and read by the assistant as "cascara sagrada tabloids, B. & W." On the 13th August, 1902, Mr. W. H. Sykes was served with goods, not the Plaintiffs,' they having been represented to him as the Plaintiffs' goods in reply to an express inquiry whether they were Burroughs & Wellcome's goods. I have specially mentioned these three cases because there was a passing-off where the goods were not denoted as "tabloid" or "tabloids" only but in such a way as to make it absolutely certain that the Plaintiffs' goods were referred to by the use of their name or initials. There were nine other cases where the goods required were referred to as "tabloid" or "tabloids." In all twelve cases were proved, seven taking place at the Piccadilly shop and five at the Deansgate shop. One was in August, 1902, five in September, one in October in the same year, and five in January 1903. Nine were accompanied by the production of writing shewing what was wanted. The witnesses gave their evidence well, and I believe them. Some point was made that they were, with, I think, two exceptions, clerks in the office of a firm of Manchester solicitors who were instructed by the Plaintiffs' solicitors, and some point was also made of the fact that no notice was given of the occasions until after the issue of the writ in the action. The orders were all what are called trap orders, and the Court is always careful to see that traps, when set, are fairly set, and in some cases to refuse to attach weight to evidence of casual transactions where the matter depends upon the effect of some exchange of remarks made weeks or months before the trial, and where notice has not been given within reasonable time after the event of the intention to rely upon what is alleged to have taken place. In each case the circumstances must be considered, and in the present case I think the traps were fair, and that the instances given in the particulars have been proved. I think that the Plaintiffs are entitled to an injunction independently of the question of registered Trade Mark.

There is one point on the form of the Order. There are several marks referred to. I think I only heard argument with respect to the marks for this particular class. Is not that so? There were some general observations made about the others, but I have not even got the details of them—there are several.

Mr. LEVETT: In the Statement of Claim it is confined to four, but the notice of motion went to several more.

Mr. Justice BYRNE: I do not know that I have heard any argument. If there is any special argument founded on those——

Mr. WALTER: No, I think not.

Mr. Justice BYRNE: I think both parties treated it as though it was on this.

Mr. LEVETT: I think so. It is the same word in different classes.

Mr. Justice BYRNE: As far as the motion is concerned, that must be dismissed with costs.

Mr. LEVETT: Will your Lordship give me a certificate? Your Lordship may remember now, under Section 77 (a), when a Trade Mark has been in dispute and proved, the Court gives a certificate.

Mr. Justice BYRNE: Will you just read me the section?

Mr. LEVETT: Section 77 (a) is this: "In an action for infringement of a registered trade mark, the Court or a Judge may certify that the right to the exclusive use of the trade mark came in question, and, if the Court or a Judge so certifies, then in any subsequent action for infringement, the Plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or Judge trying the subsequent action certifies that he ought not to have the same." The very point came before Mr. Justice Buckley in J. C. & J. Field & Co., Limited's Trade Mark, 1900, 1 Chancery, 651: "The proprietors of a trade mark, which had been registered for more than five years, brought an action for infringement, and the Defendants moved to rectify the register by removing the Plaintiffs' mark therefrom. The action and motion were tried together and on the same evidence; an injunction was granted, and the motion refused. Held that, although after the expiration of five years from the date of registration the validity of the Trade Mark could only be impeached on motion under section 90 of the Patents, Designs, and Trade Marks Act, 1883, the right to the exclusive use of the Trade Mark had come in question in the action within the meaning of Section 77 (a), and that the Plaintiffs were entitled to a certificate to that effect."

Mr. Justice BYRNE: That seems to be on all fours, Mr. Walter.

Mr. WALTER: It does not affect me. It affects other people.

Injunction granted against the Defendants. Defendants to pay damages and costs—also costs of the Comptroller of Trade Marks.

In the High Court of Justice.

CHANCERY DIVISION.

ROYAL COURTS OF JUSTICE,
14th December, 1903.

BEFORE
MR. JUSTICE BYRNE.

Burroughs, Wellcome & Co.

—v.—

Thompson & Capper.

IN THE MATTER OF THE TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816.

AND

IN THE MATTER OF THE PATENTS DESIGNS AND TRADE MARKS' ACTS, 1883-1888.

JUDGMENT.

MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Plaintiffs' Solicitors

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Defendants' Solicitors.

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CURSITOR STREET, CHANCERY LANE, E.C.
Tel. No. 1077 Holborn.

C. J. S. T.

A.1

In the Supreme Court of Judicature.

COURT OF APPEAL.

ROYAL COURTS OF JUSTICE,
Friday, 25th March, 1904.

BEFORE—
LORD JUSTICE VAUGHAN WILLIAMS,
LORD JUSTICE STIRLING and
LORD JUSTICE COZENS-HARDY.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816. Registered in the names of BURROUGHS, WELLCOME & CO., and HENRY SOLOMON WELLCOME (trading ~~as~~ Burroughs, Wellcome & Co.).

—AND—

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS' ACTS, 1883-1888. Appeal of THOMPSON & CAPPER from Order of Mr. Justice Byrne ~~(set down December 24th, 1903).~~

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. A. J. WALTER and Mr. J. H. GRAY appeared on behalf of the Appellants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY appeared for the Respondents, instructed by Messrs. MARKBY STEWART & Co.

FIRST DAY.

Mr. WALTER : May it please your Lordships, in this case I appear with my learned friend, Mr. Gray, for the Appellants, and I think Mr. Moulton, Mr. Neville, Mr. Levett, Mr. Sebastian, and Mr. Kerly appear for the Respondents. It is an Appeal from a Judgment of Mr. Justice
A Byrne given on the 14th December by which he refused a motion made by Messrs. Thompson & Capper for the removal from the Register of certain trade marks the property of Messrs. Burroughs & Wellcome.

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The particular trade marks in question are numbered 36154 and 36155, and are for the word "tabloid" registered in Class 3 and Class 42, and the marks numbered 42378 and 42379, registered in Class 3 and in Class 42, for the word "tabloids" registered in the frame. I do not know whether your Lordships have copies of these trade marks before you, but your Lordships may take it that the first two marks are with the word "tabloid" registered in Class 3 and Class 42. Class 42 relates to substances used as food or as ingredients for food, and Class 3 relates to chemical substances prepared for use in medicine and pharmacy. The first two marks contain the word "tabloid" alone, and the other two marks contain the word "tabloids." I do not know whether your Lordships are familiar with the little tabloids of chlorate of potash and things of that sort, that used to be put up in a little square box. It is merely a picture of the lid of a box. I should tell your Lordships that the first two marks were registered in April, 1884, and the other two marks— those are the tabloids—were registered in March, 1885.

Lord Justice COZENS-HARDY: Is the only difference between the second two and the first two that the second two are on a box lid?

Mr. WALTER: No, the one is "tabloid" and the other "tabloids" in the plural—"tabloid" in the first two, and "tabloids" in the second. Your Lordships see by the date, 1884 and 1885, that the marks were registered under the then existing Act of 1883, and at first some attempt was made in the Court below to crave in aid the provisions of the Act of 1888—the amending Act—but, my Lords, the Act of 1888 provided in Section 27 of the Act that: "The principal Act" (that was the 1883 Act) "shall, as from the commencement of this Act"—and the Act came into force on the 1st of January, 1889—"take effect subject to the additions, omissions and substitutions required by this Act, but nothing in this Act shall affect the validity of any act done, right acquired, or liability incurred before the commencement of this Act." That is Section 27 of the Act of 1888. That being so, Section 27 preserves all rights acquired or liabilities incurred prior to the registration of the Act, and these four marks having been registered—two in 1884 and two in 1885—they were subject to the liability in Section 90 of the old Act of 1883 to be removed from the Register by any person aggrieved. Section 90 of the Act of 1883 provides: "The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit." The present motion, my Lord, is a motion made on behalf of persons aggrieved, namely, persons who were sued in the action for infringement of this trade mark, for the rectification of the register on the ground that the word "tabloid" and the word "tabloids" were improperly placed upon the register as not being trade marks for it for registration under Section 64 of the Act of 1883. Your Lordships will recall the alteration made by the Act of 1888 when I tell your Lordships that it was the Act of 1888, which, for the first time, introduced a class of invented words. There was no provision in the old Section 64 of the Act of 1883 by which

invented words *per se* became registerable under the Trade Marks Act, and, therefore, my Lords, one has to turn to Section 64 of the old Act, and to the provisions of that, to see what were marks which were capable of registration under that Act.

A Now, my Lords, Section 64 of the Act of 1883 says: "For the purposes of this Act a trade mark must consist of or contain at least one of the following essential particulars: (*a*)"—that was the name of an individual. It was never suggested it came under that. "AB" was a written signature, and it was not suggested it came within that, but it B is suggested and was so found by the learned Judge that these words "tabloid" and "tabloids" were distinctive fancy words not in common use. The words of the section your Lordships see are: "(1) For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars: (*a*) A name of an individual or firm C printed, impressed, or woven in some particular and distinctive manner, or (*b*) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or (*c*) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use." The learned Judge has held that the word "tabloid" and D the word "tabloids" are distinctive fancy words, or words not in common use, and it is from that Judgment that we appeal in this case. I shall have, my Lords, to call your Lordships' attention to several of the authorities showing the view which has been taken by the Courts with regard to those words and I shall also have to call your Lordships' attention to some E of the more recent cases decided under the Act of 1888, but which have considerable bearing on the view taken by the Courts under the Act of 1883.

Lord Justice VAUGHAN WILLIAMS: I was looking at the sections of the Act of Parliament. What do you say is the distinction F between the section in the Act of 1883 as modified by the Act of 1888?

Mr. WALTER: Your Lordship sees that under the Act of 1883, Section 64, Sub-section 1, Provision (c), the words are: "A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use." Therefore, it had to be, dealing only with the question of G words, a distinctive fancy word or words not in common use. Now it was held under that, in a large number of cases, that the word could not be a distinctive fancy word that had any relation to or indicated in any way the character of the goods to which it was applied. Then Section 64 was amended by Section 10 of the Act of 1888, and they did away with H and took away the word mark from Sub-section (c). Your Lordships see that the distinctive device under the section of the Act of 1888 C is now, "A distinctive device, mark, brand, heading, label, or ticket." The word mark was taken entirely away, and two new classes created—"(a) An invented word or words," and "(b) A word or words having no reference I to the character or quality of the goods, and not being a geographical name." Now the "Solio" decision set at rest the question which had been raised in cases which had come before the Courts, namely, that you could not have an invented word or words which at the same time had any reference to the character or quality of the goods.

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The "Solio" decision said that Sub-sections D and E must be read distributively, and though a word might remotely, even if, in fact, it was an invented word, relate to and have some connection with a substance, still it was a word capable of registration, and that D and E must be read disjunctively and not together. The distinction made was with regard particularly to the word "mark" in the Act of 1888 and in the Act of 1883. But before I call your Lordships' attention to the law I think it would be as well that I should put your Lordships in possession of the facts as proved in evidence before the learned Judge in the Court below so far as bearing upon this question of trade mark. It was proved by Mr. Wellcome, the proprietor of the mark, and there was no evidence contradicting him, that in the year 1884, shortly before the registration of the mark, he, who had been previously using the word "tablet" to describe a small dose of medicine put up into a convenient and compressed form, and who had registered the word "tablet" as a trade mark in the year 1883, was minded to employ, in his own language, a more euphonious and pleasing word, and, according to his own account, he put on his inventive cap, and he arrived, after much study and research, at the word "tabloid."

It was also in evidence that this same gentleman, at an earlier date, being minded to use, in respect of articles which he sold, a similarly euphonious word, used the word "Ovoid," which, as he admitted in cross-examination, would probably have some connection with an egg. He said that in fact the word "Ovoid," he thought, suggested that it was egg-shaped; but, having been using for some time and selling compressed drugs to which the term "tablet" had been applied, having, as he also admitted, been advised that protection under the word "tablet" might be attended with some risk, he, as I say, devised the word "tabloid" which word he said was a word which was a distinctive fancy word, having no reference to the character or description of the goods to which it had been applied. Of course evidence as to how the word "tabloid" was used by this gentleman in the early stages is important as showing whether the word was a descriptive word or not. We find first of all, the marks having been registered in 1884 or 1885, that there is no reference to it whatever in any of his advertisements, or any of the goods to which he applied his mark, until the year 1888, although he commenced to use the word "tabloid" as far back as 1885.

Now, my Lords, I want to call your Lordships' attention to how the word "tabloid" is used, because when I come to refer to the cases it is of great importance to see how the word is used. First, he put on the market his goods in bottles labelled "Tabloids of"—then followed the various drugs. One I have before me is "Tabloids of chlorate of potash." That is how the word was used—"Tabloids of," and then followed the name of the drug. It is suggested that by some mystic process the "tabloid" conveys no idea of anything except Messrs. Burroughs & Wellcome's trade mark; but "Tabloids of compressed chlorate of potash" was the form in which they were put on the market from 1885 until 1888.

Lord Justice COZENS HARDY: Will you let me look at that? (Same handed to his Lordship.)

Mr. WALTER : Your Lordship sees it is "Tabloids of." That was how they were first put on the market. I will confine myself now to the bottles. The next thing that happened was that in the year 1888 "Tabloids" appeared on the labels in inverted commas. Next appeared
A "Tabloid," and, in small letters, "trade mark." That was a little later ; and then in 1896 we come to "tabloid system." They were evidently finding that the word was becoming terribly descriptive, therefore, they were harking back and trying to use it more as a trade mark—to destroy, if they could, its otherwise obviously descriptive meaning and its descrip-
B tive use, as they had used it when they first coined the word.

My Lords, I have referred to the bottles. Now let me refer to the literature which they put upon the market. There is a paper called the "Chemists and Druggists' Diary," a favourite medium of advertising for Messrs. Burroughs & Wellcome. This is Exhibit "H.S.W. 36," and it is
C the "Chemists' and Druggists' Diary" for 1884. That was before their user of the word "tabloid." On page 107 of that book there is a warning by Messrs. Burroughs & Wellcome, in which they say : "We take this opportunity of expressing our most sincere thanks to those members of the trade who have given us information which has enabled us to stop
D various piracies ~~of~~ our goods, such as the use of the word 'Tablets' in connection with compressed drugs." Some witnesses were called in the course of the trial who had suffered from threats by Messrs. Burroughs & Wellcome for infringement of the trade mark "Tablet," but wiser counsels prevailed when they were told to take such proceedings as they thought
E fit, and in no case did any proceeding, other than the threat, arise on the word "Tablet," which was a registered mark, and used, as your Lordships see here, with the compressed drugs which originally they obtained from Messrs. Wyeth, in the States, and which afterwards they became themselves manufacturers of. That is the first of these, and
F it is on page 107. The next is in the "Chemists' and Druggists' Diary" of 1885, being Exhibit "H.S.W. 37." There side by side we find "tablets" and "tabloids." At page 116, in the second column on the page, in what is called an open letter to the drug trade, signed, "Yours faithfully, Burroughs, Wellcome & Co.," we find advertised : "Tabloids
G of extractum pancreatus are also offered, each containing 3 grains of extractum pancreatus, also compressed pancreatic tabloids, containing," so and so. Then on the same page there are "tablets" ; and there is another mark of theirs, "valoids." But in this particular instance of "tabloids" that is the first reference we find—"tabloids of extractum
H pancreatus, each containing 3 grains," so and so.

Lord Justice VAUGHAN WILLIAMS : These are advertisements ?

Mr. WALTER : Yes, they are advertisements of theirs.

Lord Justice COZENS-HARDY : In 1885 ?

Mr. WALTER : Yes, that is 1885, my Lord.

I Lord Justice COZENS-HARDY : "Tablets" is just below, I see.

Mr. WALTER : Yes. The next one to which I will call your Lordships' attention is the "Chemists' and Druggists' Diary" of 1888, being Exhibit "H.S.W. 38" ; and at page 123 of this volume of 1888, instead of the open letter, we have this time : "Greetings. With compliments of

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the season. Very respectfully, Burroughs, Wellcome & Co." It is again a kind of open Christmas letter to the trade. "Having made important improvements in our machinery and apparatus, we are now enabled to offer very great reductions in price of several of our articles, including our tabloids and tablets of compressed drugs. Particular attention is invited A to our new style vinaigrette oval bottles of tabloids and tablets in tasteful glass-fronted cartons, making a beautiful display for chemist's show cases and windows. The prices of tabloids of soluble quinine are now so slightly in advance," and so on, to that we find the expression: "Several of our articles, including our tabloids and tablets of compressed drugs." B That is in 1888. There are many other references, but I am not going into them all. I find again in 1889 in the "Chemists' and Druggists' Diary," being Exhibit "H.S.W. 39," at page 128, "Zymine Tabloids (Fairchild)"—Fairchild being the maker of the goods which were put up in tabloids. "Weakened and perverted digestive functions," and so and C so. At the bottom of page 127 it begins: "Zymine Tabloids. These tabloids consist of only so and so, and they set out their medicinal virtues. "In form they are oblate spheroids. They are pleasing to the eye; no trouble whatever to swallow, and may be carried in the pocket by patients —always at hand when needed." These are "Zymine Tabloids D (Fairchild)." Your Lordships will find it at the bottom of page 127, and it continues on to the top of page 128. I think your Lordships will find also the doses at the bottom of the same thing: "One or two tabloids immediately after each meal, or a couple of hours after, to be swallowed with a little water." And, my Lord, your Lordships will find, if you E turn to page 137 in the same volume, the picture of the tabloid shown on one of the bottles, and your Lordships will see also that which I called your Lordships' attention to, namely, that "tabloids" is now (this is 1889) in inverted commas on the bottle. I have marked the two passages in the book, and your Lordships will find it at the beginning of page 137. F

Lord Justice COZENS-HARDY: What did you say "Fairchild" means?

Mr. WALTER: "Fairchild," my Lord, is the maker of the drug. "Fairchild's Extract" is put up by Messrs. Burroughs and Wellcome in tabloids. G

(Their Lordships conferred).

Mr. WALTER: Then, my Lords, there is a second passage, which your Lordships see with the picture, with the word "tabloid" in inverted commas. Do your Lordships see that?

Lord Justice COZENS-HARDY: Yes, we see that. H

Mr. WALTER: Now, my Lord, I am going to take your Lordships to 1896, when a transformation scene, if I may call it so, had taken place. That you will find in Exhibit "H.S.W." 41, which is the "Chemists and Druggists Diary" for 1896, and there on page 180 in the first column, and in the second paragraph we find that they are describing their goods in the I articles headed "First and always first," in this way: "The reports bearing tribute as to the superiority of our 'tabloid'"—the word

"tabloid," your Lordships see, being in inverted commas—"system of medical chest equivalents."

Lord Justice COZENS-HARDY: What is that?

Mr. WALTER: "Our 'tabloid' system of medical chest equivalents"; tabloid system, "tabloid" being in inverted commas. But even then, my Lords, they occasionally forget themselves, and in the "Chemist and Druggist" of 1898, which is Exhibit H.S.W 42, at page 244, they condescend on giving the picture of a tabloid, comparing proportions—"We can put up either in liquid or solid form." They speak of tabloid tinctures, that is to say absorbent tabloids which will suck up liquid moisture, drugs which otherwise would be given in liquid form. It is true that in 1898 they had not so far forgotten themselves that they do not put tabloids in inverted commas. Your Lordship has the same thing "tabloid"——

Lord Justice COZENS-HARDY: The tabloid brand.

Mr. WALTER: Yes, my Lord; I had not mentioned that. Tabloid brand, tabloid system. So it is "tabloid" after the commencement, then "'tabloids' of," but with the word "tabloid" in inverted commas; then "tabloid system"; and then "tabloid brand."

Lord Justice COZENS-HARDY: And "tabloid products."

Mr. WALTER: Yes, my Lord, and "tabloid products" I do not know whether it was the result of legal advice or not—as to that I do not know—but it looks like it. Now, my Lords, there are a large number of these catalogues. The catalogues are in, and I am not going to weary your Lordships by reading extracts to you from a large number showing how they use it. If, however, you will look at their catalogues in the early years you will see they are full of the user of it in the way of "tabloids of" so and so, "tabloids of," "tabloids of." It is full of them. Pictures of tabloids and the virtues of tabloids. But I say, my Lord, that those users were users to describe articles; that they were not distinctive at all, but that they described a kind of tablet, and that the word was used in its proper signification.

Lord Justice VAUGHAN WILLIAMS: You have told us that the genus was tablet, but what is the the species—tabloid?

Mr. WALTER: The species? What they sold; the little compressed drugs—tabloids.

Lord Justice VAUGHAN WILLIAMS: You do not follow me. Supposing I mention a genus, and that I then mention a species, you ought then to be able to tell me at once what is the characteristic which distinguishes this species from the genus. That is what I put to you, and that is what I want to know.

Mr. WALTER: They use the new word for the same article. If your Lordship is using the term "oid" as indicating that the word "oid" indicates a species of a genus I join issue, because the termination "oid" has no such signification.

Lord Justice Vaughan WILLIAMS; I was not doing anything of the sort. You said a kind of tablet?

Mr. WALTER: Yes, my Lord.

Lord Justice VAUGHAN WILLIAMS: I only wanted to know

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what constituted the difference which made this particular tablet a kind of tablet.

Mr. WALTER : My Lord, they used them to describe all. They were generally bi-convex. They were always compressed bi-convex goods, at least in nearly every case.

Lord Justice COZENS-HARDY : Do they now use the word "tablet"?

Mr. WALTER : No, my Lord.

Lord Justice COZENS-HARDY : When did they cease to use it?

Mr. WALTER : 1889 is the last reference that we can find in their catalogues to the use of the word "tablets"—1888 or 1889.

Lord Justice COZENS-HARDY : And previously were the tablets of the same shape?

Mr. WALTER : Yes, my Lord, the tablets were of the same shape as the tabloids absolutely. So that they had a trade mark "tablet," and they described their goods as "tablets." Then they had a trade mark "tabloid," and they described their goods as "tabloids," and for a time, namely from 1885 to 1888, they sold "tablets" and "tabloids" side by side. Then "tablets" goes out, and they sold the same articles as "tabloids."

Now, my Lords, so far I have dealt with the literature emanating from the owners of the trade mark themselves, and I am now going to current literature to show how other people used the term "tabloid," and perhaps if your Lordships will allow me I may continue that after the adjournment.

Lord Justice VAUGHAN WILLIAMS : Yes, certainly.

(Adjourned for a short time.)

Mr. WALTER : My Lords, before the adjournment I told you I was going to deal with a different branch, namely, the literature showing the meaning of the word "tabloid."

Lord Justice VAUGHAN WILLIAMS : Do you know I have not quite grasped what the question is yet. Do not refer me to the section of the Statute, but tell me what it is you wish to make out with reference to this word "tabloid."

Mr. WALTER : That it was not a distinctive, fancy word, or a word not in common use capable of registration as a trade mark at the time it was applied for.

Lord Justice VAUGHAN WILLIAMS : The first thing you wish to make out is that "tabloid "——

Mr. WALTER : Was not a distinctive fancy word.

Lord Justice VAUGHAN WILLIAMS : Why was it not a distinctive fancy word?

Mr. WALTER : Because, my Lord, it is reeking with meaning, and when I come to the cases I shall show that to your Lordships. I am now going to the literature, which shows what? I am going, as a matter of

fact, to dictionaries to show exactly what the word meant, and what everybody took it to mean. You might just as well say you can register the word "red" or the word "white" or the word "black." It is a word full of meaning.

A Lord Justice VAUGHAN WILLIAMS: Or the word "boycott."

Mr. WALTER: Or the word "boycott."

Lord Justice VAUGHAN WILLIAMS: I think myself there was a time when "boycott" was a distinctive, fancy word.

Mr. WALTER: If your Lordship were to go into the history of the
B word "Boycott," I think your Lordship would find—I happen to know a little about the word—that the word "Boycott" was always used in the sense in which it is now used.

On a formal point, my Lord, several books came from the Patent Office Library, and they are in fact here, but the Controller will not
C produce them without a subpœna. It is a formal matter, and I understand my friends do not raise any objection to it. Would your Lordship give me leave formally to issue a subpœna to the Librarian of the Patent Office to have the books produced? The Controller has no power to do it without an Order. It was issued in the Court below, and I cannot get
D them here without it. Does your Lordship allow us to issue that subpœna?

Lord Justice VAUGHAN WILLIAMS: Yes; you may issue a subpœna. Whether he will bring the books or not I do not know.

Mr. WALTER: If your Lordship pleases. I am going now to deal
E with the word as it is dealt with in the book which was referred to at the trial, and which the learned Judge in the Court below took as what he said was the last word to be said on the subject; that is the Oxford English Dictionary—Murray's Dictionary.

Mr. NEVILLE: I ought just to take this formal objection. I do
F not want to stand in my friend's way for more than a moment. It is admitted on both sides that "tabloid" had never been used until it was invented and registered and by Burroughs, Wellcome & Co., and I submit to your Lordship that the fact that it got into dictionaries and other books five or ten years afterwards is wholly irrelevant and is not
G evidence.

Mr. WALTER: I turn to Murray's Dictionary——

Lord Justice VAUGHAN WILLIAMS: Is this for the purpose of giving me information?

Mr. WALTER: It is for the purpose of showing what "tabloid"
H means, my Lord.

Lord Justice VAUGHAN WILLIAMS: I will not trouble you. I know.

Mr. WALTER: At the same time, I desire to refer to this. The termination "oid"——

I Lord Justice VAUGHAN WILLIAMS: I think I know what the termination "oid" means too.

Mr. WALTER: At the same time, with submission, my Lord, I prefer, if I may, to make it part of my argument.

Lord Justice VAUGHAN WILLIAMS: You may make it part of

Mar. 25, 1904 your argument, I suppose, if you like, but I do not know that I am bound to accept this as expert evidence.

Mr. WALTER : No, my Lord. Turning to " oid "—I find : " suffix ; the Greek εἶδος ; having the form or likeness of ; like. Examples : hematoides, like blood ; anthropoides, or anthropoid, of human form "——

Lord Justice VAUGHAN WILLIAMS : " Anthropoid " is a very good example of what in compounds the termination invariably meant.

Mr. WALTER : That is so, my Lord.

Lord Justice VAUGHAN WILLIAMS : It negatives the meaning of the first part of the word. You know at once that that which has the adjective " anthropoid " applied to it is not a man. It is perfectly conclusive that it is not a man.

Mr. WALTER : In the particular instance ; but it has the meaning of " like."

Lord Justice VAUGHAN WILLIAMS : In a compound like that it has the meaning of " like " in this sense—that it excludes the real thing.

Mr. WALTER : " Anthropoid " may.

Lord Justice VAUGHAN WILLIAMS : You will find generally that " anthropoid " is like a man, but that it is not a man.

Mr. WALTER : What is a " cycloid," my Lord ?

Lord Justice VAUGHAN WILLIAMS : I have never heard of the word.

Mr. WALTER : What is a " rhomboid ? "

Lord Justice VAUGHAN WILLIAMS : That is a very good example.

Mr. WALTER : As of the nature of a rhombus.

Lord Justice VAUGHAN WILLIAMS : It is a mathematical figure, which is not a rhombus, but which is rather like one.

Mr. WALTER : Certainly, my Lord, I quite agree ; and " tabloid " is not a tabula, but it is like a tabula.

Lord Justice VAUGHAN WILLIAMS : But it is not one.

Mr. WALTER : Never mind, I am quite content if your Lordship says it is like it.

Lord Justice VAUGHAN WILLIAMS : I say it is like, but it negatives its being so.

Mr. WALTER : I am quite content with that definition.

Lord Justice VAUGHAN WILLIAMS : Very well, I am very glad our philology leads us in the same direction.

Mr. WALTER : Your Lordship has at once put a meaning on the word " tabloid," which is all that I want. I find it is extensively used in scientific terms, and so on. I find rhomboid, trapezoid, adenoid, arachnoid, sigmoid, thyroid, anthropoid, cycloid, ellipsoid. hyperboloid, spheroid, asteroid, albumenoid, colloid, crystalloid, metalloid, solenoid, and there are enormous numbers of others. Those show that the termination " oid " means " having the form or likeness of " and " like."

Now, my Lord, the first of the books that I refer to is a book published in 1887 called " The Practitioner." That is a book which was exhibited, H.S.W. 40, and it contains an article by Dr. William Murrell

entitled "On Tablet Triturations." To triturate is a term ~~used to mean~~ which means working round with a pestle and a mortar. Now this is an article written by Dr. Murrell, who had visited Mr. Wyeth's works in Philadelphia, Wyeth being the principal
A who had originally supplied these bi-convex compressed drugs under the term "tabloids" to Messrs. Burroughs, Wellcome & Co. In describing the tablets he goes on: "I was pleased with these tabloids, and delighted with his fluid extracts." Then he goes on further: "The first tabloid to attract my attention was one containing a one minim dose of aconite.
B These tablets are lenticular." He uses the word "tabloid" and "tablet" absolutely interchangeably in an article in this book.

Lord Justice VAUGHAN WILLIAMS: Is this an advertisement?

Mr. WALTER: No, I think not, my Lord. That is in a medical book.

C Lord Justice VAUGHAN WILLIAMS: It is rather strong to ask one to take the meaning of a word from an article which obviously contains an account of a personal interview, which as far as one can judge followed the ordinary course of such personal interviews in being submitted to the party interviewed and settled by him. When I read about
D a man receiving another man with his accustomed hospitality and a description of his agreeable room, I regard it as an advertisement and nothing else.

Mr. WALTER: I will give your Lordship a more standard work. In the Century Dictionary of 1889 I find "tabloid—table plus oid) a—
E tablet, a small troche usually administered by the mouth, or, after solution, hyperdermically—recent." Its derivation is given as "table" and "oid."

Then I have Foster's Encyclopœdic Medical Dictionary of 1892, which says "tabloid, a tablet."

Lord Justice COZENS-HARDY: Both of these seem to be American
F publications.

Mr. WALTER: I think those are.

Lord Justice COZENS-HARDY: Is it in evidence whether the word was originally used by the American firm?

Mr. Walter Mr. NEVILLE: It was never used by anybody before 1884.

G Then, my Lord, the next one is the Encyclopædic Dictionary, Cassell & Company.

Lord Justice COZENS-HARDY: What date?

Mr. WALTER: I do not know, my Lord, what date. The date does not appear to be in the publication I do not see the date on it,
H but I think that it is 1902. I am not quite certain. But I find "Tabloid. Adjective and substantive, English. Table and -oid. As adjective: resembling a tablet, having the edges rounded. As substantive: a troche. Used also loosely in the sense of tablet." The next I find is Chambers's Twentieth Century Dictionary, 1901, under the heading "Tablet."
I "Tablet, a small flat surface; something flat on which to write; a confection in a flat square form." "Tabloid, a small tablet containing a certain definite proportion of some drug; a troche or lozenge; diminutive of table." Then the "Standard Dictionary, published in 1895. "Tabloid

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(pharmaceutical) a form of small tablet. See tablet. Derivation, table, noun, plus -oid."

Then, my Lord, I find that in the supplement to the "Encyclopædia Britannica" it is used in an article on the Pathology of Plants, describing certain developments of tissues: "The next change observable after some hours is that the untouched cells grow larger, push up the dead surface, and divide up the walls tangential to it with the formation of tabloid cork cells." In the article in the "Encyclopædia Britannica" there is a definite signification. The next is Dr. Foster's "Reference Book of Practical Therapeutics." There, my Lord, I find "tabloid. This is a synonym used in England to denote compressed tablets. Concerning the latter, see the article 'Tablets.'" And then I turn to "tablet," and I find there "Compressed tablets or tabloid. These consist of some medicinal substance or mixture compressed in the form of discs."

Lord Justice COZENS-HARDY: That is a later date, not 1882.

Mr. WALTERS: There is the consideration of the date, I agree, but I am now showing your Lordships how persons reading the word tabloid and seeing what its derivation is described to be would take its meaning. If these gentlemen had written the dictionaries in 1882 they would have put the same—that the word is "table, plus -oid." I am coming down to consider that position. Then, my Lord, there is the "Latin Grammar of Pharmacy," in which, under the heading "tabella," which, of course, is the medical word by which "tablet" is expressed, "tabella compressa, a tabloid." Then I find "tabloid, tabella compressa."

Now there are several other books, but it is no use going on repeating a large number; but there are a large number of dictionaries all of which refer to this word as "table, plus -oid," and they all attach the same meaning to it.

An endeavour was made to deal with these persons as students of the English language and explainers of the meaning of the words of the English language by saying that after all this was not a descriptive word, and "Oh, we have been to the dictionaries and they have promised to put in 'Used as a trade mark,'" and some of them have in the recent editions of their works put "Used as a trade mark," but they still keep in—every one of them—"Tabloid, table plus oid," and it is *nihil ad rem* in considering whether a word is a good trade mark to say, "Oh, we have been to the authors of these various works, and at our request they have put in 'Used as a trade mark.'" That does not take away for one moment from the clear evidence as to what was the meaning of the word.

Now, my Lord, I have given your Lordships the facts. In their own goods which they supply they use the word, and in the advertisements they use the word, and in the current literature.

In advertisements they used their word and in current literature the word was used.

I am now going to call your Lordships' attention to one or two passages which show how some of the witnesses understood the word and what meaning they gave to it when they first heard it. If your Lordship would turn to page 185, this is the evidence of Sir James Crichton

Browne. We had, I think, the heads of the medical profession from all parts of the Empire.

Mr. NEVILLE : You mean ~~you~~ we had.

Mr. WALTER : ~~We~~ had and this is one. They treated us to all the distinguished persons they could find scattered in the four corners of England, Ireland, Scotland and Wales. At Question 2217, in examination by my friend, Mr. Levitt, he is asked : "Can you tell my Lord what the meaning of the word 'tabloid' is in the medical profession ?—I do not know what was in the mind of the inventor of the term but I recollect at first thinking it was derived from 'tabula' which meant a plate or plank or table and the word 'oid.' Then it occurred to me if that was the case it must be a compressed term because it ought to have been 'tabuloid' and I cannot say what was in the mind of the inventor." So it is perfectly obvious the moment Sir James Crichton Browne saw it he had no doubt about it that it represents the "tabula" and the "oid." Then my Lord, Sir Richard Douglas Powell, gave evidence at page 187—I can choose from the great. At Question 2,734 he is asked : "Sir James Crichton Browne has told us what he thought about it when it came out. Did any idea cross your mind when the word tabloid came out from the look of the word ?—Something like a little table—something of that idea." Then at the top of page 116, Professor Donald Macalister is asked at Question 1417 : "What is the etymological meaning of the word 'tabloid' ?—How it was built up I do not know, but it conveys to me the impression of being something between a tablet—something similar to a tablet. (Q.) Similar to a tablet ?—Yes, in form."

Mr. NEVILLE : Look at the next question. "You do not think it is somewhat similar to a table ?—No."

Mr. WALTER : There are several others my Lord, but I am not going to detain your Lordship by going through a lot of evidence on this part of the case.

Now the first case to which I propose to call your Lordships attention is in the 34th Chancery Division, at p. 623. *In re* Van Duser's trade mark. That case refers to the words "Melrose" and "Electric." Now, my Lord, those were two trade marks, "Melrose" and "Electric" as applied to hair restorer and to velvetine, and at page 635, in the Judgment of Lord Justice Cotton, he says : "In the present case what we have to consider is whether the two words which are desired to be registered under the Act are fancy words within the meaning of Sub-section 3 of Section 64 of the Act of 1883. It has also to be considered whether they are 'distinctive' from 'not in common use' ; but the stress of the argument on each side has been on the question whether these two words desired to be registered can be considered 'fancy words' within the meaning of that section. Now, in both cases, there has been evidence adduced, and relied on, by the Respondents. The evidence in each of these cases has been that in the one case the word 'Melrose,' and in the other the word 'Electric,' have been used for a very considerable time, and that the trade have recognised goods to which those words were affixed as being the goods of the

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applicants for registration." Then, my Lord, I do not think I need read further from that, but the important part I want to read is a passage on page 637, which says: "Certain expressions were relied on which are used by Judges in various cases, saying: 'This is a fancy word.' But it must be considered how those expressions were used. Very often they were used with reference to the act of the Defendant who had applied to his own goods words which had been used for a period of time in connection with the goods of the Plaintiff, and the Judge was considering, 'What is the excuse? What can be the object of using these words? The article is not made at the place which is referred to; it is no description of the article; it must be a fancy word,' that is to say, a word used, not for the purpose of describing any peculiarity of the goods, but of representing to the public that the goods were the goods of the Plaintiff; and therefore the expressions were used, not with reference to the construction of any Statute, but with reference to the question, why and with what object the Defendant used the words." Now, my Lord, turning to page 639—perhaps I had better begin at the last paragraph of page 638—there is this: "Having made those general observations, applicable to both cases, I will proceed to deal with them separately. The first application is to register as a trade mark the term 'Melrose Favourite Hair Restorer.' The question is as to 'Melrose'; can that be registered as a trade mark with reference to articles of toilet and especially a hair preparation? We were asked by the Attorney General on behalf of the Appellant, to hold that no geographical expression can come within the description in Section 64." Then at the top of page 640 he says: "Then we come to the second case, where the applicant desires to register the words 'Electric velvet' and 'Velveteen' in respect of cotton goods. Is that word 'Electric' to be considered as a fancy word? It was contended by Mr. Aston that it was used inappropriately as regards these goods, and therefore that the word was fancifully used. In my opinion a word may not be registered as a trade mark if it is fancifully used, but only if it is a fancy word; and in my opinion we must consider whether it can properly be said that 'electric' is a fancy word, even though applied to velvet or velveteen. If it was obviously meaningless as regards the particular goods, possibly it might be considered as a fancy word, but 'electric' is a word of description, not a fancy word. I differ from the view which was pressed upon us at one time, that a word to be a fancy word must be a word not found in the dictionary. The use of a word which in itself is descriptive does not make that word a fancy word when one finds out, after having examined the character of the goods and heard the evidence about it, that it cannot properly be applied to those goods. Mr. Aston's argument would come to this, that if a man takes a word which in itself is descriptive—which is *prima facie* descriptive—and falsely and wrongly applies that to particular goods, then he may register that as a fancy word, because it is inapplicable, and must, if he wishes to speak the truth, have been used by him in an arbitrary or different sense from that which it ought properly to bear. I cannot agree

with that. When the word is, like this 'Electric, *prima facie* a descriptive word, it is, in my opinion, wrong to say that it ought to be registered as a fancy word, simply because it is used inappropriately and wrongly as regards the particular object."

A Lord Justice COZENS-HARDY : Is that case under the same Act as the " Solio " case ?

Mr. WALTER : " Solio " was under the other Act. " Solio " was under the inventive words. These are the later authorities on the question of the interpretation of the 1883 Act.

B Lord Justice COZENS-HARDY : Was " Mazawattee " ?

Mr. NEVILLE : Yes, " Mazawattee " was a fancy word, and obviously is one of the authorities.

Mr. WALTER : Yes, and " Bovril" is one of the authorities I consider most strongly in my favour.

C Mr. NEVILLE : You are going to cite " Bovril " ?

Mr. WALTER : Yes, I cited it in the Court below.

Lord Justice VAUGHAN WILLIAMS: You say you cited it in the Court below—with what result ?

Mr. WALTER: My Lord, I am Appellant. Now Lord Justice D Lindley at the top of page 642 says : " What is meant by a fancy word is not explained by the Act of Parliament, and we are left to ascertain its meaning as best we can. In order to do so, I think we are entitled upon every principle which we are in the habit of acting upon with reference to Acts of Parliament to consider a little how his expression came into the E Act. What was it that led to its insertion ? As to this we are not in the dark. It was put in to cure the defect which came to light in the case of *ex-parte* Stephens, where under the words of the Act of 1875 the Master of the Rolls found himself unable to cause to be registered a word which, I suppose, was intended to be Greek, but was certainly intended F to be a fancy word ' Aeilyton ' with reference to ink. That he could not do, and he could not do it because, under the Act of 1875, there was no provision for registering as a trade mark any word, or words, unless they had been used as trade marks before August, 1875. That was the kind of mischief which was to be cured ; and it was to cure it that there were G introduced into the Act of 1883 words which were not to be found in the previous Act—I mean ' fancy word, or words.' I do not mean to say that, because that is the history of the matter, those words are to be confined to that precise form of fancy word, but it gives us the key to what is meant. And it strikes me, I confess, that upon looking through H the Act, and at the object and the history of it, we cannot say that anything is a fancy word which conveys any meaning to an ordinary Englishman. To be a fancy word, I think the word must either have, to ordinary English people to whom this Act of Parliament is addressed, no meaning, like the word ' Eureka ' or the word ' Aeilyton,' or if it has any I meaning at all, it must be obviously meaningless when used as a trade mark. If it is not obviously meaningless, it appears to me that it has not the characteristics of a fancy word. I do not mean to say that there are no English fancy words. I am not going the length which were invited to go : that a man cannot take any word out of an English dictionary. I do not

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know what fancy words there may be in the English dictionary. I am not prepared to say there are none. I am not prepared to say that you must go to a Latin dictionary or a Greek lexicon or anything else, but the word must come up to the characteristics which I have endeavoured to explain. And so again I do not pretend to say that necessarily all A geographical names must be excluded. I do not know that it is necessary to go so far, but it is quite obvious that any name which is commonly known may be a name which has a meaning in connection with anything that is associated with it. If you pick out some name which no Englishman ever B heard of, such as Penj Deh, to which our attention was called some years ago, I do not know that that would not do. I am not prepared to say that it would not do. It conveys no meaning to an Englishman, and such a geographical name, for all I know, may be a fair and proper fancy word. I am not prepared to go the length of saying that no word you C can find in any map, in any part of the world, will not do, but when you come to a well-known place that is a different matter; then it does suggest a meaning, and not being obviously meaningless, it is not a fancy word as I understand this expression in the Act of Parliament. If 'Melrose' is not a fancy word, *a fortiori* is not 'Electric.' 'Electric' suggests a D meaning. I do not mean to say it has a meaning. The more one knows of electricity perhaps the less meaning it has. We are not considering the case of trained people who understand electricity; nor are we at liberty to confine ourselves to persons in the trade who know the secrets of trade. The Act of Parliament is for an ordinary Englishman. What E does the ordinary Englishman know of 'Electric' as applied to velveteen? He knows what 'Electric' is more or less, perhaps rather less than more, and he associates it with electricity—that is what an ordinary person would suppose, rightly or wrongly. I do not think it matters which in the least. This word is not obviously F meaningless, and is not in my judgment a fancy word." That is slightly altered at the end of the Judgment where Lord Justice Cotton says: "I think I should correct with Lord Justice Lindley's approval or his consent, the definition he gave. It should run, not 'obviously meaningless' but 'obviously not intended to be descriptive.'" G Then Lord Justice Lindley says: "Perhaps 'non-descriptive' would be better." Obviously "non-descriptive" is the word.

Now let me call your Lordships' attention to Lord Justice Lopes' Judgment in that case. "These cases raise very important questions under the Patents, Designs and Trade Marks Acts of 1883, and the decisions H of the Court with regard to the two cases must depend upon what the true construction of the Sub-section C of Section 64 of that Act should be. The words are: 'For the purposes of this Act a trade mark must consist of or contain at least one of the following essential pars' (I pass over A and B—they do not relate to these cases, and I come to C) 'a distinctive device I mark brand heading label ticket or fancy word or words not in cammon use.' Therefore with regard to these two cases which are now before the Court the words which are sought to be registered must be distinctive; they must be in common use, and they must be fancy words. It is

unnecessary to say anything with regard to the word 'distinctive,' that speaks for itself. With regard to the other expression 'not in common use' I express no opinion upon that. It is not necessary to express an opinion having regard to the decisions that the Court has arrived at with regard to the term 'fancy words.' 'But now I come to the expression 'fancy word.' It is a difficult thing to define, but it is necessary in this case that the Court should define what is meant by 'fancy word.' I adhere to the two definitions I gave of that expression during the course of the argument. I think a word to be a fancy word must be obviously meaningless as applied to the article in question. I think it must be a word fanciful in its application to the article to which it is applied in the sense of being so obviously and notoriously inappropriate, as neither to be deceptive, nor descriptive, nor calculated to suggest deception or description. Further than that, I think, that the word must have an innate and inherent character of fancifulness which must not depend on evidence and cannot be supported by evidence to show that in fact that it is neither deceptive, nor descriptive, or calculated to be deceptive or descriptive. What I mean is that a fancy word in my opinion must speak for itself, it must be a fancy word of its own inherent strength." Then he says: "I do not propose to go into the facts of these cases; they have already been so fully gone into by the other members of the Court, and the cases which are applicable to these cases have been cited. I will only proceed to apply the definition which I venture to lay down to the two cases in question. Applying the definition to the first case of 'Melrose' as applied to the 'Favourite Hair Restorer,' I consider that word not a fancy word within the meaning of the Act."

Now, my Lords, applying the tests laid down in this case, is tabloid a word fanciful in its application to the article to which it is applied, and has always been applied?—to what are known as tabloids. Is it so obviously and notoriously inappropriate as neither to be descriptive nor calculated to suggest description? I say it trespasses absolutely against those. If any of your Lordships had seen the word "tabloid" at the moment of its birth your Lordships would at once have known that it was a word meaning like, or in the nature of, a table or tablet.

Lord Justice VAUGHAN WILLIAMS: I do not think I should have known that.

Mr. WALTER: Your Lordship would have known what it was derived from, knowing tablets were in use; tablets was a known term.

Lord Justice VAUGHAN WILLIAMS: What surrounding circumstances am I supposed to have?

Mr. WALTER: You are supposed to know the article to which it is to be applied. The next case I am going to call your Lordships' attention to says you have to put yourself in the position of knowing the article to which the trade mark is going to be applied. You have to say whether, having one of these little articles in front of you in 1884, when that word was alleged to be coined, that word could not be descriptive, or would not have suggested description to your Lordship at the time of its birth. I

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say it is only by divorcing one's mind from intelligence that one can put one's self in that position—any person having any knowledge of the manner in which the English language is formed. It is admitted that the suffix "oid" is the commonest suffix used in forming derivatives in the English language, and what is said is this: That because this gentleman, upon the evidence at present before the Court, was the first to create the diminitive "tabloid," that therefore that word, although formed in the ordinary way in which English derivatives are formed, and is recognised as such by all the dictionary writers, does not suggest descriptiveness in connection with the articles to which it is applied.

Lord Justice COZENS-HARDY: It might be applied to malt and hops.

Mr. WALTER: It was never used.

Lord Justice COZENS-HARDY: It is registered in that class.

Mr. WALTER: Your Lordship has to see in what way it was used; it has never been used with regard to those other goods. I go further and say there is no suggestion that it is used for three-quarters of the goods. My motion is perfectly good to have the registration limited to the goods in respect of which it has been used. Your Lordships know, in the case of non-user of a trade mark, you can have the register restricted to goods for which it has been used. There is no suggestion it has ever been used with regard to anything except these small medicinal tablets.

Lord Justice COZENS-HARDY: Is there no suggestion it has been used in Class 42?

Mr. WALTER: No suggestion it has been used for goods except these.

Lord Justice COZENS-HARDY: That is Class 3?

Mr. WALTER: There are articles of food; they have put up tabloids of tea; they have put up compressed tea—and things of that kind. They have put up tea in tabloid form—I cannot use any other term. I say, therefore, the law laid down by the Court of Appeal in this case has never been dissented from. Your Lordships see both Lord Justice Lindley and Lord Justice Lopes say that it is in connection with the article to which it is to be applied. Your Lordships remember the passage I read: "I think a word to be a fancy word must be obviously meaningless as applied to the article in question." That is the test.

Let me call your Lordships' attention to the Bovril case. The Bovril case is in 1896 2 Chancery. "Bovril" was registered under the Act of 1883. At the bottom of page 605, in the Judgment of Lord Justice Lindley, he says: "In the first place let us look at what this Court has said on the subject. In Van Duzer's case"—which I have just called your Lordships' attention to—"and Leaf's case, cases in which a coined word was not under consideration at all, but ordinary English words were under consideration, the Court said that a common word will not do. You have got a fanciful use of a known word. You must have a word which is obviously non-descriptive. I agree that the Court went a step further in the Somatose case, which turned upon the Act 51 and 52 Victoria, chapter 50, section 10, in which we had the expression 'an invented word or invented

words, or a word or words having no reference to the character or quality of the goods.' The decision of the Somatose case I accept with all loyalty, although I did not agree with it." Mar. 25, 1904

Mr. NEVILLE: That has been over-ruled.

A Mr. WALTER: That was not under this Act at all. It has been overruled in the Solio case although I did not agree with it. It is to the effect that 'Somatose' was not an invented word, and was not now descriptive within that section. We did not differ about anything more than this. I thought it was an invented word, and the other members of the Court B thought it was not. I thought it was not descriptive; they thought it was. That is all. But I disregard that case except for this purpose, namely, to show that that was the ground of the decision. It would be altogether wrong for us to take the Act of 1887 and substitute for the words 'fancy word' 'a non-descriptive word.' That is not the language C of the Legislature. But I agree a word which describes the article to which it is applied will not do. Let us therefore ask ourselves whether 'Bovril' is a descriptive word. To my mind it is not descriptive, notwithstanding Mr. Bower's very ingenious argument. He tries to make it out to be a descriptive word, not by taking the D word, but by taking a lttle bit of it, and he says because 'Bov' may have some relation, and does have some relation to 'ox,' therefore 'Bovril' describes—what? I do not see that it describes anything at all. Does it cease to be a fancy word not in common use? If it is so descriptive as to cease to be a fancy word not in common use, well and good; E but if the description is only to be got at by the ingenious suggestion that 'Bov' must mean 'ox,' we must ask what the whole word means. No one knows—no one ever heard of it; I have not the slightest idea what 'Bovril' really means as a word." Nor did anyone else. There is no such termination "ril." You could not get it in a dictionary. There is no termina- F tion "vril" or "ril." There is no such suffix in the English language. The word is not coined by using any suffix known in the English language. "I followed Mr. Bower's argument, and I am quite alive to the fact that it has been applied to extract of meat. At the time when this word was first coined can one say more than this, that it had some relation, or G might have some relation or application, to an ox? Is that descriptive so as to destroy its character as a fancy word? The real truth is that this is a fancy word not in common use. I think the test suggested by Mr. Moulton is a correct one. I think it is eminently and purely a question of fact. H Now, I ask myself this: Supposing that a Jury were asked to say whether on November 2nd, 1886, 'Bovril' was a fancy word not in common use, and supposing they said, upon a direction from the Judge, which I think it would be the duty of the Judge to give, that if they were of opinion that it really intelligibly described the thing sold, it would not do, could I they, with that direction, reasonably say it was not a fancy word not in common use? I do not think they could. That really settles the matter." Applying that same test, and directing yourselves as Judges, that you were to consider the word "tabloid" at the date of its registration in 1884, and asking yourselves whether it

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intelligibly described the thing sold, I ask your Lordship to say, as juries, that it did describe the thing sold, and, therefore, it was not registrable as a trade mark. It is wholly different to the word "Bovril." "Bovril" was rightly decided to be a fancy word. It had no meaning at the date of its birth. "Tabloid," if it had not a definite meaning, clearly suggested a meaning, therefore it is directly opposed to Van Duzer's case, because "tabloid" undoubtedly suggested it. Now, my Lords, Lord Justice Lopes, at the bottom of page 607, says: "Now, in 1886 the word "Bovril" was clearly a new word coined for the occasion. It can be found in no dictionary. It was not known in any language. In my opinion it stands on a different footing from the words 'Melrose' and 'Electric' used in the Van Duzer and Leaf cases, because they were old words well known in the English language, and with an established meaning. I hold entirely to the definition of a fancy word which was given in those cases, namely, that to be a good fancy word it must be obviously meaningless as applied to the article in question. It must be fanciful in its application to the article to which it is applied in the sense of being obviously and notoriously inappropriate, so as to be neither deceptive nor descriptive, nor calculated to suggest deception or description. I believe those were my own words; but I do not think they differ in any way from that which was held by the other members of the Court. Now, apply that to the word 'Bovril.' It is said that the word 'Bovril' indicates that the substance in question was made from beef, for that the first syllable 'Bov' relates to the animal from which beef comes—'Bos,' 'bovis,' an 'ox.' In my judgment you must look at the whole word, and not at part of it. The combination of that part of the word with the rest of it may be such as to make the word in its totality meaningless and non-descriptive. That is the view that I take of the word 'Bovril.'" Then at the bottom of the page: "Now, to ascertain whether the word 'Bovril' is a fancy word, I test it in this way—the way with which I am most familiar. I say to myself: What would an intelligent Jury say if they were asked whether 'Bovril' was a fancy word? If I had had to try the case I should have told them that they must keep in their minds that this word was placed upon the register in 1886, and that they must regard it as it stood at that time. I should have told them that to be a good fancy word it must be non-descriptive and meaningless as applied to the article to which it was intended to be applied." Now, my Lords, directing yourselves as Juries, you will ask yourselves whether "tabloid" was non-descriptive and meaningless as applied to the little bi-convex goods to which it was to be applied.

Lord Justice VAUGHAN WILLIAMS: Do not I remember something about the name of those glass bottles you throw under the impression they will put a fire out?

Mr. WALTER: That was the "Gem" trade mark, was not it?

Lord Justice VAUGHAN WILLIAMS: No, not the one I mean, I think.

Mr. WALTER: The "Star Grenade."

Lord Justice VAUGHAN WILLIAMS: Yes, perhaps it was the

"Star Grenade." I thought in one of the names it was called a "bomb."

Mr. WALTER: It may be, my Lord.

Lord Justice VAUGHAN WILLIAMS: Suppose that to be so, according to your view, would that be a fancy name?

A Mr. WALTER: A "bomb"?

Lord Justice VAUGHAN WILLIAMS: Yes.

Mr. WALTER: No, certainly not.

Lord Justice VAUGHAN WILLIAMS: It could not possibly have any meaning in relation to a bottle that you had to throw and break.

B Mr. WALTER: But why not, my Lord?

Lord Justice VAUGHAN WILLIAMS: A bomb is something that explodes.

Mr. WALTER: So does that, my Lord. It operates only by breaking and exploding.

C Lord Justice VAUGHAN WILLIAMS: I thought you broke the bottle and the liquor came out.

Mr. WALTER: So it explodes in a shell or bomb. That is exactly what happens.

Lord Justice VAUGHAN WILLIAMS: Because ~~of~~ the breaking D there is entirely different; it is the explosive which is inside it. There is no explosion if in the absence of a corkscrew you knock the neck off a bottle. It is not an explosive.

Mr. WALTER: It depends on what is inside, my Lord. It may be. I have known cases where the character of the liquor was such that it E did explode. I say there again there tests laid down as to how the Court is to find out whether or not a word is a fit word or is a distinctive fancy word, and I say in that case, also, testing this question according to the rules laid down in this case, that it offends against those rules as much as against the others.

F Lord Justice VAUGHAN WILLIAMS: Take this case you have just been reading—the Bovril case. The Court did not say that the first half of the word did not suggest an ox.

Mr. WALTER: Oh, no.

Lord Justice VAUGHAN WILLIAMS: It suggested an ox as the G source from which something that was sold was derived.

Mr. WALTER: The only rule that was laid down was this: Take the whole word. Is that word meaningless?

Lord Justice VAUGHAN WILLIAMS: I agree, but let me take that half of the word. What do you say then? The Court had no doubt H the first half of the word referred to "Bov," had they?

Mr. WALTER: They said it might.

Lord Justice VAUGHAN WILLIAMS: No, no.

Mr. WALTER: It probably did.

Lord Justice VAUGHAN WILLIAMS: Here the first half of I "tabloid" probably refers to "tablet."

Mr. WALTER: But unfortunately "oid" is a perfectly well-known way of forming a word common in the English language. There is no such termination as "ril.' It is a meaningless addition to a word. It means nothing. But "tabloid" does mean something in each of its

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syllables and in its entirety. That is why I quote "Bovril" as the strongest authority. Supposing they had registered "Bovine," could anyone have suggested for a moment "Bovine" could be registered? Of course it would be knocked out at once as being descriptive.

Lord Justice VAUGHAN WILLIAMS: What does your termination mean? A

Mr. WALTER: It is an English diminutive, or derived from—the termination "ine," that is. In the dictionary you will find that "ine" is a common English derivative.

Lord Justice VAUGHAN WILLIAMS: I did not know it was a diminutive. I did not think so. B

Mr. WALTER: It is an English derivative.

Lord Justice VAUGHAN WILLIAMS: But it is not a diminutive at all.

Mr. WALTER: "Derivative," I think, was the term I used—~~malten~~ Maltine C —malt.

My Lords, there are other cases which I am going to call your Lordships' attention to where a similar word has been held to be a good word, because the termination was an unknown termination, and expressed no meaning. D

My Lords, my submission is that, applying the tests laid down in the Bovril case, this trade mark cannot stand.

Now, my Lords, the Plaintiffs tried to pray in aid the fact that it was an invented word.

Lord Justice VAUGHAN WILLIAMS: That is true, is it not? It was an invented word, was it not? E

Mr. WALTER: Yes, my Lord, using the word in that sense. Now, that is a proposition I want to controvert. I am going to show that if they were coming under the Act of 1888, that as an invented word it is still bad, and offends against the Solio judgment. If it is not an invented word even if it does relate to the character and description of the goods and can still be registered. I say it cannot be a fancy word—a distinctive fancy word—under the Act of 1883. F

Now, my Lords, the Solio case to which I propose to call your Lordships' attention, is reported in 1898 Appeal cases, at page 571. G

Lord Justice COZENS-HARDY: That was a word with reference to photographic plates, was it not?

Mr. WALTER: No, my Lord, the word "Solio" was used with reference to photographic paper. I propose to read first some remarks in the speech of the Lord Chancellor, and the passage which I want to call attention to is at page 577. "My Lords, I desire to give my opinion with reference to the particular word and not to go behind it." Your Lordships remember that in the Court of Appeal the word "solio" had been held to be an invented word, but they had brought in the fifth or the (*e*) division which says that you could have a word registered which did not relate to the character and description of the goods. and they had held that you could not have a good invented word which did not relate to the character H I

and description of the goods. They held that it was a good invented word if it had not any reference to the character and quality of the goods, and the House of Lords said these two sub-sections (*e*) and (*f*) must be read disjunctively and not conjunctively. The passage I am now referring to, my Lords, is on page 577. "My Lords, I desire to give my opinion with reference to the particular word and not to go behind it. I can quite understand suggesting other words—compound words or foreign words as to which it would be impossible to say that they were invented words, although perhaps never seen before." That is why I slightly hesitated when your Lordship said that "tabloid" was an invented word; I agree it was a word never seen before, but I deny that it was an invented word in the sense in which the term is used in the Act of Parliament. I say it is merely an adding to an ordinary English word an ordinary suffix in use in the English language; a diminutive or a derivative word formed in the ordinary way in which the English language is enriched.

Lord Justice COZENS-HARDY: Speaking only for myself, can it be successfully contended that it is enough to show that the word was never known before? With regard to that, the Uneeda case is a case in point.

Mr. WALTER: No, my Lord. The Judgment goes on: "Or that they did not indicate the character or quality of the goods, although, as words of the English tongue, they had never been seen before. Suppose a person were to attempt to register as a single English word 'Cheap and good,' or even without taking so gross an example, using a word so slightly differing from an ordinary and recognised word as to be neither an invented word nor, avoiding the prohibited choice of a word, indicating character or quality. The line must be sometimes difficult to draw; but to my mind the substance of the enactment is intelligible enough, and the comptroller has to make up his mind whether in substance there has been an infringement of the rule. Of course, also words which are merely misspelt, but which are nevertheless, in sound, ordinary English words, and the use of which may tend to deceive, ought not to be permitted. I am satisfied in this case to say that the word 'Solio' is an invented word, that it does not indicate the character or quality of the goods, and that the decision of the Court of Appeal ought to be reversed." In the same way it is true that s-o-l is derived from "sol"; but "io"—what did "solio" mean? Nothing. The fact is that as a word it meant nothing.

Now, my Lords, take Lord Herschell's Judgment, and the passage I ask your Lordships to refer to is in the last paragraph of page 581. The noble Lord says: "It may no doubt sometimes be difficult to determine whether a word is an invented word or not. I do not think the combination of two English words is an invented word, even although the combination may not have been in use before; nor do I think that a mere variation of the orthography or termination of a word would be sufficient to constitute an invented word." My Lords, I say the Solio judgment decides in terms that "tabloid" would fail if they were applying under the Act of 1888 as an invented word. Then the Noble Lord proceeds:

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"If to the eye or ear the same idea would be conveyed as by the word in its ordinary form. Again I do not think that a foreign word is an invented word simply because it has not been current in our language. At the same time I am not prepared to go so far as to say that a combination of words from foreign languages so little known in this country that it would suggest no meaning except to a few scholars might not be regarded as an invented word. It is in this respect that I desire to qualify my Lord Justice A. L. Smith's propositions that an invented word can never have a meaning." Then, my Lords, I will just refer to what Lord Macnaghten says——

Lord Justice VAUGHAM WILLIAMS: How would Lord Herschell have dealt with "Satinine" as an invented word?

Mr. WALTER: He would have struck it out, my Lord, absolutely.

Lord Justice VAUGHAN WILLIAMS: What is it he says about it here. He mentions it in his Judgment, does he not?

Mr. WALTER: Yes, my Lord, your Lordship is quite right.

Lord Justice VAUGHAN WILLIAMS: I certainly thought he mentioned it.

Mr. WALTER: Yes, my Lord, he said: "It may be that the word 'satinine' which was there in question was objectionable on other grounds; but if the word be an invented one I do not think the quantum of invention is at all material. An invented word is allowed to be registered as a trade mark, not as a reward of merit, but because its registration deprives no member of the community of the rights which he possesses to use the existing vocabulary as he pleases." The noble Lord is quoting there from Lord Justice Kay.

Lord Justice VAUGHAN WILLIAMS: I daresay, I only thought I would call your attention to what was said about it.

Mr. WALTER: He says: "In considering the case of an application to register a trade mark under (*d*), the only question which, in my opinion, has to be determined is whether the word sought to be registered is an invented word. In one of the cases on this subject, Lord Justice Kay said, 'There is extremely little invention in the matter.' It may be that the word 'Satinine,' which was there in question, was objectionable on other grounds; but if the word be an 'invented' one, I do not think the quantum of invention is at all material." That I agree with.

Lord Justice VAUGHAN WILLIAMS: I daresay, but he does not take the view which you are putting forward here.

Mr. WALTER: I do not say he does. The way he read that was this——

Lord Justice VAUGHAN WILLIAMS: I read that that if he had arrived at the conclusion that "satinine" was an invented word, then, unless there was some other reason for it not being an invented word, he would have held that it was an invented word notwithstanding that it was "satin" plus a termination.

Mr. WALTER: I read it that he expresses no opinion at all upon the word.

Lord Justice VAUGHAN WILLIAMS: Very well, but I do not quite agree myself.

Mr. WALTER : I do not think he is expressing any opinion on the word " satinine." He introduces it, but does not say what his view on the word is.

Lord Justice VAUGHAN WILLIAMS: He says it may be objectionable on other grounds.

Mr. WALTER : He says " if the word be an invented word," it was not before him to consider whether " satinine " was an invented word or not.

Lord Justice VAUGHAN WILLIAMS : I daresay it may be that the word " satinine " was objectionable on other grounds, that is to say that he does not think Lord Justice Kay's objection to it that it did not involve much invention was a good one.

Mr. WALTER : I have never suggested, my Lord, that the quantum of invention has to be considered.

Lord Justice VAUGHAN WILLIAMS : I do not say you did.

Mr. WALTER : But what I do say is that Lord Herschell is not there expressing any approval of the word " satinine." Then the passage that I want to refer to in Lord Macnaghten's Judgment is on page 583, the second paragraph.

Mr. NEVILLE : Do you mind reading the first paragraph, because I shall have to read it. It is a little higher up, beginning at the words : " In 1883 the Legislature "——

Mr. WALTER : My learned friend asks me to read an earlier passage : " In 1883 the Legislature, for the first time, allowed persons to register as trade marks words not used as trade marks before August, 1875. The privilege was conferred by adding to the words 'a distinctive device, mark, brand, heading, label, ticket,' which were substantially taken from the Act of 1875, the words, 'or fancy word or words not in common use.' To be capable of registration as a new trade mark it was therefore required by the Act of 1883 that the word proposed to be registered should be a 'fancy word' 'distinctive' and 'not in common use.' Everybody knows the trouble which that enactment gave. In trying to construe it the Courts were almost driven to despair, until at last in the Court of Appeal two learned judges declared that to be a fancy word a word must be 'obviously meaningless,' though one of those two learned judges seems to have retracted or qualified his opinion before the next case was called on. For these very troublesome words in the Act of 1883, the Act of 1888 substituted the expression 'an invented word or words.' It made the substituted expression a separate, independent and sufficient condition of registration. And now if a proposed trade mark consists of or contains an invented words or invented words it is capable of registration. But the word must be really an invented word. Nothing short of invention will do. On the other hand, nothing more seems to be required. If it is an invented word, if it is 'new and freshly coined' (to adapt an old and familiar quotation) it seems to me that it is no objection that it may be traced to a foreign source, or that it may contain a covert and skilful allusion to the character or quality of the goods. I do not think that it is necessary that it should be wholly meaningless. To

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give an illustration : Your Lordships may remember that in a book of striking humour and fancy which was in everybody's hands when it was first published, there is a collection of strange words where 'there are' (to use the language of the author) 'two meanings packed up into one word.' No one would say that those were not invented words. Still they contain a meaning—a meaning is wrapped up in them if you can only find it out. The object of putting a restriction on words capable of being registered as trade marks was, of course, to prevent persons appropriating to themselves that which ought to be open to all. There is a 'perpetual struggle' going on, as Lord Justice Fry has observed, 'to enclose and appropriate as private property certain little strips of the great open common of the English language.' 'That,' he added, 'is a kind of trespass against which I think the Courts ought to set their faces.' And I think the Legislature has set its face against it both in the Act of 1883 and in the Act of 1888. There is little danger of the apprehended mischief if invention be required as a condition of registration. After all, invention is not so very common.

Lord Justice VAUGHAN WILLIAMS : Is there any confirmation of the end of the sentence you were just reading, an invented word is always to be registered as a trade mark, not as a reward of merit.

Mr. WALTER : That is so, my Lord.

Lord Justice VAUGHAN WILLIAMS : If it is an invented word, although you may say your invented word is compounded out of beginnings and terminations that are familiar to the people of this country, you are not depriving them of anything if you use this new word, this invented word.

Mr. WALTER : With great respect I absolutely join issue with your Lordship. I say you have no right to give any member of the public the exclusive right to use a word compounded with a known suffix from a known word. I say that if precedents are to be laid down that I am not able to form from table or tablet, tabloid in the same way as from rhombus I have formed rhomboid, from cycle cycloid, and all the other words I have formed with a known meaning, using it in its known sense. I say, my Lord, that it is destructive to the proper development of the English language ; I put it as high as that.

Lord Justice VAUGHAN WILLIAMS : I have not heard anything yet about the proper development of the English language.

Mr. WALTER : I have taken a passage which means that. If your Lordship finds that no variation of the orthography or of the termination of a word is held not to be an invented word——

Lord Justice VAUGHAN WILLIAMS : That I quite admit.

Mr. WALTER : That is what I say is the case here. I say that taking the Judgment of Lord Herschell, if any word which is not to be found in the English language is necessarily an invented word, if any word which is never to be found in a dictionary, no matter how it is formed, by the addition of an "e" or a "t" or an "i," or anything else—if that is to be taken as the true test—I say that is not the test laid down by the House of Lords. The House of Lords said it is not an invention. Now I am going to read your Lordship the Judgment which deals very fully with this. It is the Judgment of Lord

Shand in the same case—page 584: "My Lords, I am of the same opinion. The separation of the clauses in the section of the Statutes in question by the letters "*d*" and "*e*" and the alternative particle "or" satisfy me that the two clauses are independent and to be construed as independent provisions, so that the terms of Clause (*e*) do not control or affect the terms of Clause (*d*). At the same time I agree with your Lordships, and particularly with what has been said by my noble and learned friend, Lord Macnaghten, in thinking, especially after the decision to be given in this case, that the Comptroller-General will be fully warranted in taking care that there shall not be admitted, under the guise or cover of words called 'invented,' by the Applicant, words really in ordinary use, which might, in a disguised form, have reference to the character or quality of the goods. There must be invention, and not the appearance of invention only. It is not possible to define the extent of invention required, but the words I think should be clearly and substantially different from any word in ordinary and common use. The employment of a word in such use, with a diminutive or a short and meaningless syllable added to it, or a mere combination of two known words, would not be an 'invented' word; and a word would not be 'invented' which with some trifling addition or very trifling variation, still leaves the word one which is well known or in ordinary use, and which would be quite understood as intended to convey the meaning of such a word." I say that the word "tabloid" cannot exist as an invented word in connection with the Judgment of Lord Shand. I say that "tabloid" trespasses against every rule and against the whole reasoning underlying the Judgment of the House of Lords, and it could not be registered as an invented word under the Act of 1888, and if it could not be registered as an invented word under the Act 1888 *ex necessitate* it is not a distinctive fancy word under the Act of 1883.

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Lord Justice VAUGHAN WILLIAMS: If a man invented a lozenge, what should you say if he called it "pastilloid"?

Mr. WALTER: Bad, absolutely. I am going to show your Lordship that electroid has been held bad, though a new word, and not to be found in any dictionary. The term electroid was held by the Courts to be bad, because, although it was admitted, it was never to be found in any dictionary——

Lord Justice VAUGHAN WILLIAMS: What was it applied to?

Mr. WALTER: It was applied to some anti-fouling composition, That is the next case I am going to call your Lordship's attention to.

Mr. LEVETT: It was Hannay's trade mark.

Mr. WALTER: I say the true meaning of the decision in the House of Lords is that you must have invention, and you cannot have invention if you form a word by adding thereto a suffix which is a known suffix. You cannot alter a word by adding a suffix to it with a known meaning. That is not invention, although probably at the first glance it seems so.

Now let me call your Lordship's attention to the electroid case. That is only reported in Vol. VII. of the Reports of Patent Cases, page 46, "For the Respondent it was argued that he was entitled to sever part of the trade mark, and that 'electroid' was a fancy word, and could stand. I

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was not a dictionary word, and was not in common use." Mr. Justice Chitty said: "The object of this motion was to rectify the Register of Trade Marks by striking out the Respondent's trade mark, which runs thus, 'Hannay's Electroid Anti-fouling Composition.' Mr. Dickinson is constrained to say that those words are distinctive fancy words not in common use. The words, to be distinctive, must be fancy. As to "composition," of course, he cannot say that; and, as to 'anti-fouling,' of course, he cannot say it; but he stands on 'electroid,' and says that is a meaningless word with regard to this subject matter. But his client swears, and there is not the least ground for doubting the truthfulness of his client, that he used the word 'electroid' to indicate the presence of electrical action combined with his new process. It is clear therefore it has a meaning, and that it is intended by the person who uses it to describe the article. Nothing more is to be said. In the result the trade mark must be removed from the register and the costs must follow."

Electroid was an unknown word, and it not to be found in any dictionary now. If "electroid" which has never got to the dignity of a dictionary word is a bad word, and is formed of the termination "oid," why is "tabloid" a good word? It was suggested in argument by my friend Mr. Neville in the Court below that it would be better if it had been "tabelloid," and I rather gathered from him that he doubted whether he could have supported "tabelloid."

Mr. NEVILLE: I did not say that———

Mr. WALKER: A distinction was drawn. One knows how English derivatives are dealt with—all the useless syllables are knocked out in the formation of words in the English language; and so "tabelloid" becomes not "tabelloid" but "tabloid." Tablet, table, tabloid are all used as regards the particular article to which those words were applied; and they all, as I said in the Court below, and as I say now, reek with meaning.

Lord Justice VAUGHAN WILLIAMS: Do you know any purely English word in which "oid" has been used as a suffix?

Mr. WALTER: I have got a list from here to the other side of the Strand of words with "oid" in them. I will look through them.

Lord Justice VAUGHAN WILLIAMS: I was not asking for that. I was asking whether you can give me any purely English word.

Mr. WALTER: I have got a terrific list of them, but I cannot recall them at the present moment.

Lord Justice VAUGHAN WILLIAMS: I do not remember one. Still you may be right.

Mr. WALTER: There are an enormous number, my Lord—I do not know how many words which end in "oid"—in the dictionary.

Lord Justice VAUGHAN WILLIAMS: I say a purely English word, which is another thing.

Mr. NEVILLE: There is "avoid" and "devoid."

Lord Justice VAUGHAN WILLIAMS: I do not call that a suffix.

Mr. WALTER: Does your Lordship call "table" a pure English word?

Lord Justice VAUGHAN WILLIAMS : Certainly not—but it has come to have an English form—Table, I agree, is not a pure English word, if you mean by that that it is not derived—nearly every word in the English language is derived either from Latin, Greek, or German.

A Mr. WALTER : I agree, my Lord. What I am protesting against in this case is the attempt which is being made on the part of the owners of the trade mark in this case to prevent the English language from enriching itself in its known way. In the very way in which " tabloid " is formed, half the English language is formed. From " crystal," of course,
B my Lord, there is " crystalloid," but I do not know what the derivation of crystal is ; it is Greek, I think.

Lord Justice VAUGHAN WILLIAMS : That is all right—nobody says a word against *oid* as a termination to the Greek.

Mr. WALTER : It is the termination in a number of Latin words.

C Lord Justice VAUGHAN WILLIAMS : So you tell me, and that is why I am asking you for some. I do not know them.

Lord Justice STIRLING : I thought it was an offence against the laws of scientific nomenclature to combine Latin and Greek together.

Mr. WALTER : I agree, it is, but unfortunately the English
D language trespasses against every one of the laws which are laid down by professors and jurists.

Lord Justice VAUGHAN WILLIAMS : I remember—not here, but before I was here—quoting the derivation of a word, and I was told that my derivation was absolutely impossible as it was a compound of
E two languages. It is fair to say that it did turn out that the compound was such.

Mr. WALTER : " Fungus " is, I think, pure Latin. I do not know any Greek word like that.

Lord Justice VAUGHAN WILLIAMS : Nor do I.

F Mr. WALTER : " Fungoid " is a well-known word. " Rhombus " is a Latin word, and from it we get " rhomboid "—and I know of no Greek there.

Lord Justice STIRLING : I think you are right about fungus. I think the Greek is a totally different word.

G Mr. WALTER : Then " ovoid," my Lord, is Latin, I think.

Lord Justice VAUGHAN WILLIAMS : Is " ovoid " in its origin a trade name ?

Mr. WALTERS : I think not.

Lord Justice VAUGHAN WILLIAMS : You would not find such
H words in Johnson, I am certain.

Mr. WALTERS : Perhaps not in Johnson, but I think that, if you look at any dictionary we have now, you would find " ovoid." It was before " tabloid." I look in a cheap shilling dictionary here—" Blackie's Standard Dictionary "—and I find " ovoid " there. This is in 1903, in a
I cheap shilling dictionary. " Ovoid " is " egg-shaped."

Lord Justice VAUGHAN WILLIAMS : Probably you would find " tabloid " too.

Mr. WALTERS : Yes, my Lord, you do ; you find " tabloid " there also : " A small lozenge containing medicine, a drug." That is Blackie's

Mar. 25 1904 Standard Shilling Dictionary. "Ovoid" is in the Imperial Dictionary. I have no doubt, my Lords, you will find "ovoid" in Murray.

Lord Justice VAUGHAN WILLIAMS: Yes, it is from the Latin.

Mr. WALTERS: It is from the Latin, from "Ovum." That is found in 1828. I am afraid that as a trade mark it is bad.

Mr. RALPH NEVILLE: It is not mine. Then "Meniscus" is Latin, surely. It is a form of lens—a concave convex lens. It is convex on one side, and concave on the other side. I think it is from the Latin. I find, my Lord, that even in the dictionaries we have got as far as "Zincoid," of the nature of zinc." That has got into the dictionary. Well, zinc is certainly an English form.

Lord Justice VAUGHAN WILLIAMS: I can only say that I protest. There is a dictionary here, Chambers's Twentieth Century, which unblushingly puts "Ovoid," Latin "Ovum," and Greek "Eidos;" and there is "Oviform" just above it. They ought to have known what the word was.

Mr. WALTERS: The English language, as one knows, has notoriously been formed by the breaking of all the rules. I believe that the English language transgresses against the rules of purity of language more than any other language in the world, in the way in which we have combined, in the English language, Latin and Greek and every other.

Lord Justice VAUGHAN WILLIAMS: You find incongruous unions of that sort in doctors' Latin.

Mr. WALTERS: However, fortunately, we are not here to inquire and determine as to the purity or otherwise of the forms of the English language. But I say that by the same reasoning by which "electroid" was held to be bad as a trade mark, so "tabloid" is an equally bad trade mark.

The next case to which I will ask your Lordships' attention is a case very much in point with regard to the termination. That was the case of "savonol." That is a decision of Mr. Justice Buckley under the Act of 1888, in the matter of Wagel—Field v. Wagel. That is reported in volume 17, Patent Cases Reports, on page 266. That was a motion to remove from the register the word "savonol." I see that Mr. Justice Buckley agrees rather with my reading as to the trademark. In referring to this case he says, "I understand Lord Herschell there to mean that 'satinine' might be objectionable, that is to say because it is not really invented; it is only taking the word 'satin' and appending to it the affix 'i-n-e,' which means something. Many words which end in 'i-n-e' mean of the nature of, or resembling." There is the question I was going to refer to in Mr. Justice Buckley's Judgment. He goes on: "You speak of a crystalline lens, a lens that is made of crystal. There are many other words, such as 'maltine'; that is an invented word I suppose which means of the character of malt, or having the nature of malt; and 'satinine' which means, if applied to starch, the product there in question, a starch which gives a satin like finish to the goods. That is what I think Lord Herschell is referring to." Then he goes on at line 16, on page 272: "I pause

there, before reading the sentence from Lord Shand's opinion, on which Mr. Cutler relied, to say that, as regards this particular word, 'savonol,' to my mind it has no meaning at all. I am not acquainted with the affix 'ol' to another word to express some sub-meaning of the principal word. 'Ol' appended to a word means nothing, as far as I know. Mr. Cutler put to the witnesses words like 'savonette'—a totally different thing, as it seems to me. 'E-t-t-e,' as one knows, is a form of diminutive in the French language. 'Savon' is soap; 'savonette' is the diminutive of soap in some sense or other; but 'savonol' to my mind means nothing at all. I should be entirely non-plussed if anybody asked me what 'savonol' means. Then it is said that part of the word is 'savon,' which we all know is the French for soap. What does Lord Macnaghten say? He says, 'If it is new it is no objection that it may be traced to a foreign source.'" Then Mr. Justice Buckley quotes from the Judgment of Lord Shand and Lord Macnaghten, and then he winds up at the bottom of the page by saying, "It appears to me that 'savonol' is an invented word. It is a word which has in itself no meaning at all, unless you derive a meaning from the fact that it contains the word 'savon,' and if so, it appears to me that it is within the passage I have read from Lord Herschell's Judgment."

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My Lord, with great respect to the learned Judge, if I may say so, I think that that is entirely based on the right reason. "Savonol" like "Bovril" means nothing. "Savonette" would have meant something. "Tabloid" means something. I am applying the same reasoning that one finds in that Judgment. I say that that is an authority in favour of my case.

My Lord, the next authority which I propose to call your Lordship's attention to is a rather long one. I do not know whether I may let the matter end there for to-day.

(Adjourned until Monday, March 28th, at 11 o'clock.)

In the Supreme Court of Judicature.

COURT OF APPEAL.

ROYAL COURTS OF JUSTICE,
25th March, 1904.

BEFORE—
LORD JUSTICE VAUGHAN WILLIAMS.
LORD JUSTICE STIRLING and
LORD JUSTICE COZENS-HARDY.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816. Registered in the names of BURROUGHS, WELLCOME & CO., and HENRY SOLOMON WELLCOME (trading as Burroughs, Wellcome & Co.)

— AND —

IN THE MATTER of the Patents Designs & TRADE MARKS' ACTS, 1883-1888. Appeal of THOMPSON & CAPPER from Order of Mr. Justice Byrne (set down December 24th, 1903.)

FIRST DAY.

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Appellants' Solicitors.

MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Respondents' Solicitors.

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CURSITOR STREET, CHANCERY LANE, E.C.
Tel. No. 1077 Holborn

C.S.T C.A.T (A 2)

In the Supreme Court of Judicature.

COURT OF APPEAL.

ROYAL COURTS OF JUSTICE,
Monday, 28th March, 1904.

BEFORE—
LORD JUSTICE VAUGHAN WILLIAMS,
LORD JUSTICE STIRLING and
LORD JUSTICE COZENS-HARDY.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816. Registered in the names of BURROUGHS, WELLCOME & CO., and HENRY SOLOMON WELLCOME (trading as Burroughs, Wellcome & Co.).

—AND—

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS ACTS, 1883-1888. Appeal of THOMPSON & CAPPER from Order of Mr. Justice Byrne.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. A. J. WALTER and Mr. J. H. GRAY appeared on behalf of the Appellants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY appeared for the Respondents, instructed by Messrs. MARKBY STEWART & Co.

SECOND DAY.

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Mr. WALTER : When the Court rose on Friday, my Lords, I had been calling your Lordship's attention to the cases dealing with Section 64 of the Act of 1883, and I had called attention to Van Duzer's Trade-mark, the Solio case, Bovril and Hannay's Trademark; and to a case
A under the Act of 1888 of Savonol before Mr. Justice Buckley, in which "ol" being a termination of which the learned Judge was unable to find any meaning, he held that Savonol was good. I now come to

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one or two other cases under that Act, which I propose to call your Lordships' attention to. The first is the "Triticumina" case. That is a case of Meaby & Co., Limited v. Triticine, Limited, which is reported in 15th Reports of Patent Cases at page 1. That was a motion to take off from the register the word "Triticumina." The case was before Mr. Justice North, as he then was, and I am going to read from page 14 at line 49. He had been dealing with another point. "But, as I said, I do not intend to decide the question upon this particular point, because the second point is one which is clear, and, to my mind, perfectly conclusive; that is the question whether this name 'Triticumina' is descriptive or not. 'Descriptive' is the phrase generally used, but we must turn to the Act of Parliament for the precise phrase. This was registered in 1886, and therefore the Act which applies to it is the Act of 1883, and there is the description of what a trade mark may be." Then he reads the section of the Act. Then he says: "I do not see that 'Triticumina' was in common use at that time at all. The question is whether it is a 'fancy word or words.' Now, with respect to that, the decisions are perfectly clear. I only need refer to the well-known decision in Van Duzer's case, where the whole thing was thoroughly gone into, the law clearly laid down, and from which there has not, so far as I am aware, been the slightest dissent expressed in any Court from that time to this. I am not going to read through the case now, as I have had to do so myself before, and it is familiar to everyone, but reading the full Judgments of the learned Judges from beginning to end, what we get to is this. Lord Justice Lindley says: 'To be a fancy word I think the word must either have, to ordinary English people to whom this Act of Parliament is addressed, no meaning, like the word 'Eureka,' or the word 'Aeilyton'; or, if it has any meaning at all, it must be obviously meaningless when used as a trade mark. If it is not obviously meaningless, it appears to me it has not the characteristic of a fancy word.' Lord Justice Cotton had said the same: 'To be registered it must be a fancy word, and, in order to come within that description, it must be a word which obviously cannot have reference to any description or designation of where the article is made or of what its character is.' Then Lord Justice Lopes said: 'I think a word to be a fancy word must be obviously meaningless as applied to the article in question. I think it must be a word fanciful in its application to the article to which it is applied in the sense of being so obviously and notoriously inappropriate as neither to be deceptive nor descriptive nor calculated to suggest deception or description.' Then I read what Lord Justice Lindley said about it. His definition was qualified rather by his consent, because Lord Justice Cotton says at the end: 'I think I should correct, with Lord Justice Lindley's approval, or his consent, the definition he gave. I should run, not "obviously meaningless," but "obviously not intended to be descriptive,"' and Lord Justice Lindley says: 'Perhaps now descriptive would be better.' I cannot add anything to that. That has been accepted as the law from that time to this. There always may be a question in any particular case in what way a particular word is used. The 'Bovril'

case, one of the most recent cases on the subject which was referred to, was one in which the Court came to the conclusion that the word 'Bovril' was not descriptive, but the word in each case must be dealt with on its own merits; and the reasons why I cite Van Duzer's case is because it lays down the law—the principle to be applied with respect to each word as to whether it is or is not a proper trade mark. I do not think we need go further than to look at the description of it contained in the advertisement of the 30th October. I have not had the advantage of Mr. Meaby's or Mr. Farnworth's evidence upon the point; but, reading the advertisement that their firm published shortly afterwards, it is quite clear what 'Triticumina' means. It is derived from 'Triticum'—wheat, which the firm has taken as their telegraphic word, and as their short address. Then to that the word 'ina' is added. There are many cases which show that the mere addition of such a suffix as that is not sufficient to make the word to which it is added a fancy word; and more than that, the word here is obviously descriptive. Just look at this advertisement: 'Important for children and infants and for all who require strengthening food. Meaby's 'Triticumina (Patent) Entire Wheat Meal Bread and Prepared Wheat Meal"; then, a little further on, they quote Dr. Allinson's letter to them on the subject: "I have gone carefully into your process of preparing wheat meal, and have watched the operations of bread making with great interest at your bakery, Queen's Road, Reading.' Then he goes on to speak of the 'most palatable Entire Wheat Meal Bread, without the use of soda, or other injurious chemicals.' Then, a little further on, there is a fresh paragraph, after the quotations from Dr. Allinson and Dr. Shea, and then comes this: 'Triticumina Patent Prepared Wheat Meal. The meal can be ground to any degree of fineness, and is prepared in three qualities.' It points to the three—coarse, medium, and fine—and then it says this: 'As it is prepared from the finest grown wheats, without the addition of any other cereal, it is much more acceptable to the delicate organs of infants and enfeebled persons than the many prepared foods of mixed cereals, in which each cereal requires a different degree of cooking and digestion.' Then it goes on to speak of the chemical operation, which I need not stop to read. Then there is another quotation from Dr. Allinson and Dr. Shea. Dr. Allinson says the 'Triticumina' Patent Meal is an excellent article of diet, and so on, and it is pointed out how much better it is than oatmeal and other meal. Now, without going further, that derivation of the name, and that advertisement describing it by the person who brought it out, is conclusive to my mind as to what 'Triticumina' is and what it is intended to designate. It is intended to designate these wheat meal products which are described in that advertisement, and described over and over again in various other advertisements which have been put in evidence. I have not the slightest doubt that it was intended to be by its name descriptive of the thing to which it was applied, and to point out how much better that thing was than other things in which the wheat meal was not contained at all, or, at any rate, not solely contained. In my opinion, therefore, the trade mark is one which is not a fancy word as

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used in the Act of Parliament, and is not, therefore, a good subject of a trade mark."

Now applying that case to this ; from the first, in all the first of their advertisements, they use the word "tabloids" to describe the article ; in all their advertisements they give pictures of tabloids, and then, when you come to the second trade marks, unless it is descriptive, what is the meaning of "tabloids"? The second two trade marks are "tabloids." Did you ever hear of the plural of a fancy word? What is the meaning of "tabloids"?—more than one tabloid—absolutely descriptive—tabloids. They say "tabloid" is a fancy word, yet they register as a trade mark the word "tabloids" afterwards.

Lord Justice VAUGHAN WILLIAMS : You say a fancy word means a singular fancy word?

Mr. WALTER : A fancy word is a word which means nothing – that is what a fancy word is. A fancy word means nothing, therefore you cannot have a plural to that which means nothing. You cannot add to the definition of "nothing" by making it plural. See their very use of it. Your Lordships remember the whole of their advertisements, to which I have called attention, are "take one or two tabloids"—"tabloids of." What is the meaning of "tabloids of"?

Lord Justice VAUGHAN WILLIAMS : What do you say to "taradiddle"? That may have been a good fancy word.

Mr. WALTER : It might have been.

Lord Justice VAUGHAN WILLIAMS : We will assume for the moment that it was a good fancy word. Would it be a bad one because it was changed to "taradiddles"?

Mr. WALTER : No, my Lord, because by the time it became "taradiddles" it would have become known.

Lord Justice VAUGHAN WILLIAMS : How can you say, if "taradiddles" would be good, that "taradiddle" would be bad?

Mr. WALTER : I do not, my Lord. I say that "taradiddle" might be good.

Lord Justice VAUGHAN WILLIAMS : We will suppose that it was good when it was first used. You shall choose your own time.

Mr. WALTER : Before it had a meaning "taradiddle" meant nothing.

Lord Justice VAUGHAN WILLIAMS : We will suppose that it was after the first year altered to "taradiddles," do you say that it would have been bad?

Mr. WALTER : It would not make a bad trade mark if it were obviously meaningless when it first saw the light.

Lord Justice VAUGHAN WILLIAMS : I was on your alleged necessity, that a singular word changed into the plural, cannot be a fancy word.

Mr. WALTER : What is the meaning of "tabloids" on the top of the box?

Lord Justice VAUGHAN WILLIAMS : That is another matter. I was only dealing with your general proposition. I thought you put it too widely.

Mr. WALTER : I accept the correction, my Lord ; perhaps I put it too widely. When I see the word " Tabloids " on the top of a box which contains a number of bi-convex articles, what does it mean ?

Lord Justice COZENS-HARDY : What is that which you have in your hand ?

Mr. WALTER : It is only a sheet or card on which I have had placed for my own convenience all the trade marks. When I find a box with " Tabloids " on the lid of it, and inside bi-convex articles, what are those articles ? They are Tabloids. I shall come shortly to show you that the word " Tabloid " was dedicated from the first—and really there is substance in this, because I shall show that they bring themselves within the principle of the Triticumina case—from the first they dedicated this word as a descriptive word to the use of the public. That is the first proposition I make on it. They themselves dedicated this word as descriptive at the date when they first brought it out, and they cannot take it back. The strongest evidence of dedication is their own advertisements. Every advertisement until we come to the year 1888 uses " tabloid " purely descriptively. Then your Lordship will remember, I called your attention on Friday to the Pilgrim's Progress of " tabloid," commencing descriptively ; then " tabloids " put in inverted commas ; then " tabloid brand," and then the " tabloid system." Now, my Lord, that is the Triticumina case.

Now there is another case to which I want to call your Lordship's attention, and that is the case of " Emollio." That arises in the matter of Grossmith's trade mark, and is reported in VI. Vol. of the Patent Case Reports at page 180 ; that was the case of an application to register the mark " Emollio " as a trade mark for an article of perfumery. The case came before Mr. Justice Kay as he then was, and he refused to allow the registration of the trade mark. The passage I am referring to is on page 181, line 37 : " Now on the evidence before me it appears that this word Emollio was used on the labels attached to a certain perfumed cream which had been made and sold by the father of the present Applicant in his lifetime." I do not know that I need read that, but he deals with the statement that the name is used upon a certain cream. And now turning over to the next page, page 182, in the first paragraph, Mr. Justice Kay says : " Now it is quite evident from this statement that this word never could be registered as a fancy word if it were a new word. The word ' Emollio ' is the Latin word, and means ' I soften,' and clearly when applied, on the lid of this box containing the tablet, it is descriptive of the effect of the use of that tablet." So exactly " tabloids " on the lid of the box, or " tabloids " anywhere about it, describes the articles that are within it. " If there were any doubt about it, the words I have read on that lid show it ' softening and whitening the hands.' So that here is a tablet with the words ' I soften '—' I soften tablet ' is the English of it. That clearly would be descriptive ; but the ground on which it is sought to obtain registration "—and then he goes on to deal with another section of the Act.

Lord Justice VAUGHAN WILLIAMS : Might I if I was a

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publisher, and brought out educational works, take as my trade mark to distinguish my books and my pamphlets *emollit mores* ?

Mr. WALTER : No, my Lord ; not if it was after the Act of 1883.

Lord Justice VAUGHAN WILLIAMS : All I can say is that it is rather straining the Act of 1883 to say that I could not take that.

Mr. WALTER : After the Act of 1883 you could not ; but I cannot say whether or not your Lordship could if you had gone back into the dim ages of the past and had used that trade mark prior to the 13th August, 1875.

Lord Justice VAUGHAN WILLIAMS : I am assuming a modern user, and if I am asked whether that is descriptive, I should say, No, it is intended to remind little boys of their Latin grammar.

Mr. WALTER : Your Lordship could not register that unfortunately within the Act. You have ~~got~~ to register it as a distinctive fancy word or words not in common use. One could hardly suggest that " emollit mores " was not in common use.

Lord Justice VAUGHAN WILLIAMS : That is not a word in common use.

Mr. WALTER : I should have thought so. I should have suggested that it was. It is a collocation of two perfectly well known words in a sense which is very usual. I should have the greatest pleasure in deciding against your Lordship in that if I ever had to decide that question. It has been held that Latin words are not fancy words.

Lord Justice VAUGHAN WILLIAMS : I am rather accepting the view put forward by Mr. Justice North in the Triticumina case. It is not really whether the words are capable of a meaning, but whether the words as used were intended to describe a quality.

Mr. WALTER : I agree that that is one way of looking at the question. Therefore, I say in this case there is an *a priori* case. For the first three years from the first time the tabloid saw the light the word was used in a descriptive way, and no other way. What is the meaning of it? " Tabloids of chlorate of potash," and so on ; there are so many of them. " Tabloids of compressed chlorate of potash." What is the meaning of compressed chlorate of potash tabloids—the articles inside are tabloids. They are called tabloids. It is written large that all may read—" tabloids of chlorate of potash "—not " chlorate of potash, tabloid brand," not " chlorate of potash, tabloid system," but frankly, boldly " Tabloids of Chlorate of Potash," that is how they use it. What does it mean if that is not using a thing descriptively? One might just as well say " Pillules of Chlorate of Potash " or " Tablettes of Chlorate of Potash." What is the meaning of " Tabloids of Chlorate of Potash," if it does not mean it is descriptive of an article. What is the meaning of their having a picture, " Size of Tabloids," in their advertisements. What is the meaning of comparing the size of a dose to a dose of liquid when they use tabloids as a substance to suck up. I say the word means something, and they cannot get away from it.

Lord Justice VAUGHAN WILLIAMS : When you were at school you neither took a tabloid nor a tablette medicinally.

Mr. WALTER : I do not know, my Lord. I have not suffered much

illness. Now there is one other case I propose to call your Lordship's attention to, the Linoleum Manufacturing Company v. Nairn. That is not a trade mark case, but, of course, it was really a question of trade mark and a question of trade name—that is the reputation attached to certain goods under a certain name. There is really no distinction in principle between the trade mark and the trade name; they are both names by which to describe, although, it is true, certain statutory provisions apply to the case of trade marks properly so called which do not apply to trade names. The Linoleum Manufacturing Company v. Nairn was a case where the inventor of a new substance had given to it a name, and he had taken out a patent for his invention, and during the continuance of the patent had sold the substance under that name. It was held that, having that name attached to the thing, he was not, after the period of the patent had gone by, entitled to the user of that name any longer. There are some passages in that case which are rather useful as bearing upon this trade mark question too. This was decided by Mr. Justice Fry.

Lord Justice VAUGHAN WILLIAMS: What was the action for?

Mr. WALTER: The action was to restrain the use of the word "Linoleum."

Lord Justice COZENS-HARDY: What is the reference?

Mr. WALTER: It is in 7 Chancery Division at page 134. It was an action to restrain the use of the word "linoleum."

Lord Justice VAUGHAN WILLIAMS: On the ground that the user of it must necessarily be calculated to confuse the advertiser's goods with the linoleum.

Mr. WALTER: That is so. Mr. Justice Fry at the commencement of the Judgment "stated the facts as to the patents and observed that down to the present time nobody else had made or sold 'linoleum' or floor cloth made of 'linoleum.' But it appeared that the sole manufacture by Mr. Walton and those claiming under him was due entirely or to a large extent to the existence of the numerous patents, the effect of which was to give Mr Walton and those who claimed under him a monopoly in the manufacture and sale of this linoleum floor cloth. It was, therefore, not surprising that the name by which Mr. Walton designated the compound had been applied exclusively to the manufacture of Mr. Walton and those who claimed under him. The case of the Plaintiffs was that they had a trade mark and that the essential or one of the essential and material terms of that trade mark was the word 'linoleum' and that this bad been taken by the Defendants. His Lordship then described the trade mark and expressed his opinion that 'F. Walton's Patent' was the most conspicuous part of the trade mark used by the Plaintiffs, and that the word 'Linoleum' appeared to be used only as descriptive and was not an essential part of the trade mark; and that the Defendants' trade mark contained their own name much more conspicuously than the word 'Linoleum,' and was quite dissimilar from the Plaintiffs' trade mark. His Lordship then continued. But it has been argued that this case comes within the second class of cases to which the Master of the Rolls referred in Singer Manufacturing

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Company v. Wilson, and that the word Linoleum from the user which had been made of it must mean the goods manufactured by the Plaintiffs, and that therefore to take the word 'Linoleum' and use it was to assert that the goods so sold and made were made by the Plaintiffs, and that any user of the word 'Linoleum' was a fraud, not in a moral point of view, but in the point of contemplation of this Court. ~~The~~ The argument is that there was a misrepresentation, the misrepresentation consisting in alleging by the use of the word 'Linoleum' that the goods were made by the Plaintiffs when in fact they were made by the Defendants. It will be observed that the inquiry with regard to the use of the word 'Linoleum' as a constituent element in the trade mark, and the inquiry as to the use of the word 'Linoleum' as a misrepresentation, are one and the same inquiry, and I must consider what the word 'Linoleum' meant as used at the time when the Defendants intended to attribute it to their manufacture. In the first place, the Plaintiffs have alleged, and Mr. Walton has sworn, that having invented a new substance, namely, the solidified or oxidised oil, he gave to it the name of 'Linoleum,' and it does not appear that any other name has ever been given to this substance. It appears that the Defendants are now minded to make, as it is admitted they may make, that substance. I want to know what they are to call it. That is a question I have asked, but I have received no answer, and for this simple reason, that no answer could be given, except that they must invent a new name. I do not take that to be the law. I think that if 'Linoleum means a substance which may be made by the Defendants, the Defendants may sell it by the name which that substance bears. But then it is said that although the substance bears this name, the name has always meant the manufacture of the Plaintiffs'. In a certain sense that is true. Anybody who knew the substance, and knew that the Plaintiffs were the only makers of this substance, would, in using the word, know he was speaking of a substance made by the Plaintiffs. But, nevertheless, the word directly or primarily means solidified oil. It only secondarily means the manufacture of the Plaintiffs." Then he says: "Until some other person is making the same article, and is at liberty to call it by the same name, there can be no right acquired by the exclusive use of a name as showing that the manufacture of one person is indicated by it and not the manufacture of another."

Now, applying that case, what I say is that in 1884, when this trade mark was registered, the Defendants described the goods they made by it descriptively, and, therefore, it lacks that which is essential under the Act as a constituent of a trade mark; it is not distinctive. "Tabloids of" ~~means~~ purely and simply descriptive, and is not and cannot be distinctive. When a word has once become descriptive it ceases for ever to be able to acquire the character of distinction.

Now, my Lord, those are the cases to which I call your Lordship's attention. There are one or two others to which I wish to call attention as to what really is the effect of this holding on the word "tabloid."

Now in the particular case in question there was no use of the word

"tabloids" at all upon any article of any sort or description, but certain written orders were sent in for tabloids, and tablets were supplied. There was never any bottle labelled "tabloids" of any kind or description.

Now let me call your Lordships' attention to the way in which this is now used in literature. Your Lordships must have become familiar with the way in which it is now used. I will give your Lordships one or two instances of the way in which it is now used. For instance in "Punch" we find "Opera in tabloid," "Grand opera in tabloid." This is for the purpose of showing how the considerations arise in dealing with this question of trade mark. The word, as I say, has become part of the current literature, although I do not rely upon that so much for the purpose of showing it is impossible, but I use this as showing how essentially descriptive the thing is. Your Lordship knows it was used by them for the purpose of describing small compressed tablets of miscellaneous drugs. We find on the 4th of March of this year "Opera in tabloid" as the heading of an article in "Punch." "Theatrical managers, realising that this is the age of condensation, have decided on grand opera in tabloid doses as the latest time-saving amusement novelty." Then taking a somewhat higher sphere I find in "Nature" of April, 1903: "Yet we may question the advantage of compressing all our information into tabloid form." Then I turn again to "Punch" of 29th March, and I find there is a supposed suggested interview with Mr. Wells: "Is it true, Mr. Wells, that you are a convert to the tabloid dietary?" Then I find in lighter literature in the "Tatler," "Carmen in tabloid." Then we find further in the "Tatler": "It is many years since I saw Mr. Lawson in 'Humanity,' before he tabloided it into a sketch." It has become now a verb, "tabloided it into a sketch." Then again we find in the "Tatler": "Tabloid Melodrama," and in "Punch" again in July of last year: "Messrs. Buszard fortunately make an excellent bee biscuit of compressed sugar." Then he talks about Molassoid Tabloids of Lord Avebury's brand. Then there are a large number of others. "Tabloid life" I find in the "Daily Mirror." "We have all of us taken tabloids. I am beginning to think that we shall be tabloids before very long. . . . . A flat is but a house tabloid, and a staircase of flats is a bottle of tabloids representing a main street." Then the "Daily Mail" goes in for tabloid missives; exultant march of the picture postcard," "Modern art in tabloid." Were it not that the word "tabloid" was so full of meaning it is impossible that that word could be used absolutely in its primary sense in a case strictly analogous to the use to which it was first applied, the medicinal tablets of compressed drugs. Then, of course, there was evidence in this case that it is constantly used by doctors in ordering things. They wrote ordering tabloids. Of course there was evidence the other way. We had a large collection, as I told your Lordships, of distinguished people, judging by the bills sent in to us and the terrific fees.

Lord Justice VAUGHAN WILLIAMS: Is "terrific" a well-chosen adjective?

Mr. WALTER: I should have thought so; 300 guineas to come into Court and speak for five minutes.

Mr. MOULTON: Surely——

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Mr. WALTER: I am unfortunately saluted with a bill of £4,200.

Lord Justice VAUGHAN WILLIAMS: Do not try and convince Mr. Moulton that a fee of 300 guineas is terrific.

Mr. WALTER: I apologise, my Lord.

Now, my Lord, if "tabloids" is a good trade mark, every chemist in this country who anybody comes and asks for tabloids, whether he has got any goods labelled "tabloids" or not—it is a household word—sells an article as a tabloid at his peril, it being used descriptively by the person who asks for it, and who knows it in no other way than descriptively. I have called your Lordship's attention to the literature. Then there was evidence that a gentleman who advertised tablets produced some hundreds of orders of tabloids, the orders being intended for his goods.

Now, my Lord, that, substantially, is the case that we put before your Lordships, and may I sum up very shortly the case, as I say, for the removal of this trade mark from the register.

Lord Justice COZENS-HARDY: What, if any, is the suggested difference between tablets and tabloids?

Mr. WALTER: None, my Lord. "Tablet" was the original word. Then your Lordship remembers "tablets" and "tabloids" were used for a time together. Mr. Wellcome did not like the word "tablet." He wanted a more euphonious word was the evidence which was given, and therefore he selected "tabloids." That is the evidence given by Mr. Wellcome, the inventor, that he desired a more euphonious word than "tabloids." I say, having found "tabloids," he proceeded to do what it was obvious was the only thing that could be done, he used it to describe the very articles. He put it on the bottles from the very first, and called them tabloids of the various drugs. I say, my Lord, that that is not, and cannot be, within the words of Section 64 of the Act, a distinctive fancy word in common use.

Mr. Justice COZENS-HARDY: Does it indicate any difference in the shape? that is what I mean?

Mr. WALTER: No, I do not think it does, my Lord. They were made bi-convex and compressed before. They were originally the importers of goods from America manufactured by Messrs. Wyeth. Gradually they got out of the agency and began to make entirely their own goods. They continued for some time to sell "tabloids" and "tablets" together. As regards "tablet" and "tabloid," so far as I know, there is no distinction; they are all the same article; they are all just about the same size and shape. So it is not within paragraph C of Sub-section 1 of Section 64; this is not a "distinctive fancy word or words not in common use." First of all, I say it is not distinctive. No word which is descriptive can be distinctive. As Mr. Justice North said in the Triticumina case, you must see how the owner uses it; they used it from the first descriptively, and so have these people. That being so, I say it is not a fancy word. "Distinctive" is the word which on the cases governs the whole matter. Distinctive device or distinctive mark, distinctive brands, distinctive heading, distinctive label, distinctive package, distinctive fancy word, distinctive word or words not in common

use. Your Lordships will find in some of the Judgments I have read that the word "distinctive" is part of the essential description of the word which is held to be a trade mark within the Act. First of all, I say it is not distinctive. Then I say it is not a fancy word, and that "tabloid" is formed in a way in which no fancy word is allowed to be formed, that is to say they have taken an ordinary word and added an ordinary suffix to it.

Lord Justice VAUGHAN WILLIAMS: You have all the cases at your fingers' ends. What does "distinctive" mean?

Mr. WALTER: It means the goods of a particular person, and not descriptive.

Lord Justice VAUGHAN WILLIAMS: Is that the same meaning that has been put upon the word by the decisions?

Mr. WALTER: "Distinctive" is dealt with in Van Duzer's case.

Lord Justice VAUGHAN WILLIAMS: So far as I know, if you take the natural meaning of "distinctive" it does not bear the meaning you have just said the cases attributed to it. Supposing I was describing the meeting in Hyde Park yesterday, and I said that each group had a distinctive banner; it would not be the less descriptive. The question whether that was a distinctive banner would merely mean whether it was different from other people's.

Mr. WALTER: "Distinctive banner" means that it distinguishes that particular group from any other.

Lord Justice VAUGHAN WILLIAMS: I think I recollect one of the mottoes: "Freemen never will be slaves," or something of the sort. That would be a distinctive banner, would it not?

Mr. WALTER: Yes, my Lord. I have a short note here in my friend, Mr. Kerly's excellent work, page 132 of the second edition. "Lord Halsbury defined the word in similar language to that of Lord Justice Fry quoted above in Percy Davis & Company v. Harbord. 'Distinctive,' he said, 'means distinguishing a particular person's goods from somebody else's, not a quality attributed to the particular article but distinctive in that respect that it means it is a manufacture that is distinguished from somebody else's,' and he held that the word 'pain killer' applied to a patent medicine was neither descriptive nor distinctive, therefore it must mean not a quality attributed to the particular article." I say "tabloid" is a quality attributed to the particular article, it is a description of the article. Therefore I say, dealing with Section 64 of the Act, it is not distinctive; it is not a fancy word, and I say that it comes within "Triticumina" in its termination "ina," and "electroid" in its suffix "oid," and all the various other cases which have held that a word cannot be a fancy word or words not in common use, which is merely taken from an ordinary English word with a derivative formed in a known way by adding a known suffix.

Lord Justice VAUGHAN WILLIAMS: Of course one must in applying this Statute follow, in so far as they agree, previous decisions; but, so far as one is left at large, I cannot help feeling myself that there is some resemblance between the Trade Marks Act and the Statute of Frauds. They are both of them intended to prevent frauds.

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Mr. WALTER : Undoubtedly.

Lord Justice VAUGHAN WILLIAMS : And one would like to construe them so that they should do so.

Mr. WALTER : But your Lordship remembers that, according to the passage to which attention was called in the House of Lords in the Solio case and the passage which I read, you have no right to put an unfair hardship upon the British public by inducing actions which would have the tendency to attribute fraud to a person by what is called "Enclosing the great common of the English language." I say though you have not enclosed a piece of the known language you have deprived the public of the right to use a word which in the ordinary course of the development of the language must come into existence. The passage I referred to was in Lord Macnaghten's Judgment in the Appeal Cases of 1898, at page 583 : "The object of putting a restriction on words capable of being registered as trade marks was, of course, to prevent persons appropriating to themselves that which ought to be open to all. There is a 'perpetual struggle' going on, as Lord Justice Fry has observed, 'to enclose and appropriate as private property certain little strips of the great open common of the English language.' 'That,' he added, 'is a kind of trespass against which I think the Courts ought to set their faces.' And, I think, the Legislature has set its face against it both in the Act of 1883 and in the Act of 1888. There is little danger of the apprehended mischief if invention be required as a condition of registration. After all invention is not so very common." I say there is not a shadow or tissue of invention in this. One could sit down and coin invented words in this way by the gross, if one were so minded, and at the same time taking ordinary words and either adding diminutives or variants to them ; but you cannot deprive the word of its meaning. One has to test this word as a whole, and therein it differs from "Bovril" and all the other cases. Take "tabloid" as a word—not now, but at the moment it came into existence. You are not to take a labourer from a country workhouse, both uneducated and unintelligent, but you are to take the ordinary intelligent members of the English community, and I ask your Lordships to say whether, if you had seen the word "tabloid" in the first instance you could have had any doubt whatever that it had some relation to "table," and that it was "a kind of" or "like" a table ? Your Lordships will remember in Van Duzer's case you were told, in considering whether or not it was descriptive, you had to note what the article was in respect of which it was going to be used—for that must not be lost sight of in the cases—and in considering the question whether "tabloid" was a descriptive word, it is not sufficient to look at the word at large, but you must look at it in connection with the articles to which it was to be applied.

Lord Justice VAUGHAN WILLIAMS : I protest against a statement that you made just now about a countryman. Countrymen may not have so much book learning, but I do not agree that they are uneducated, and I do not agree that the consequence follows which you suggest, that their want of book learning makes them unintelligent.

Mr. WALTER: They are sometimes extremely intelligent. I thought I had guarded myself by saying that he was unintelligent, and taken from the workhouse, although that does not necessarily follow, because there may be most intelligent people even in the workhouse. But your Lordships know the class of person. It is not necessary you should take the greatest scholar, but I say you must take the great body of the intelligent British public, and if you tell them that this was applied to articles contained in bottles, given to people with the word "tabloids" on, and these things inside, could anyone say the word was not descriptive?

Lord Justice VAUGHAN WILLIAMS: Take as an example what you are putting—the great body of uneducated dunces. They had just enough knowledge to recollect it was rather like a word.

Mr. WALTER: I have never heard acetic acid and acetyline mixed up before, my Lord, but it may be as your Lordship says, and there may be some connection, but I confess it has not occurred to me.

Lord Justice COZENS-HARDY: I begin to doubt whether there is any portion of the great common you spoke of last. I observed some years ago that the number of trade marks registered had reached 250,000, I suppose now they are nearly half-a-million.

Mr. WALTER: Yes, my Lord, but then your Lordship will remember that they are not all words.

Lord Justice COZENS-HARDY: No, happily not; but still, I am one of those heretics who doubt whether honest traders have been so greatly protected as some seem to think.

Mr. MOULTON: Your Lordship remembers that a great number of those trade marks are for labels.

Lord Justice COZENS-HARDY: Oh, yes, I know that, of course. I remember that; but still, it is nevertheless a very startling thing. It has been a very good thing, no doubt, for the members of the public, and also for the legal profession, but I doubt whether it has been good for the traders themselves.

Mr. MOULTON: My Lord, if your Lordship says that, I should like respectfully to join issue with your Lordship as to the effect of trade marks. I think they have had the finest influence on trade marks of anything at the present day, and I can show your Lordship that. It is the one thing that connotes character and success in trade.

Lord Justice VAUGHAN WILLIAMS: Perhaps it may be desirable that we should lay down as a rule of law that when a trade mark comes to be well known it is to be taken away.

Mr. WALTER: Now, my Lords, I have dealt with the section. The argument which I have used before your Lordships is that looking at the word as they have used it on their own articles it is descriptive, and that, looking at the way they use it on their own advertisements, it is descriptive.

Then, my Lord, the next class of argument is that all the dictionaries at once took it in its true descriptive sense, and gave its derivation "table" and "oid." They gave its meaning. The only way that is met is by saying, Oh, yes, but we went to them, and then they corrected that

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and said it was used as a trade mark. They have not one of them withdrawn its derivation, notwithstanding they so used it as a trade mark. I say the mere fact that they have done that is no indication whatever of their right, but I use that literature in the strongest possible way as proving my contention.

Then, my Lords, on the cases, I say that the cases support these propositions : One, that the true test in considering whether the word is a distinctive fancy word is, knowing the article to which the word is to be applied, has the word a descriptive meaning, or does it suggest a descriptive meaning. If so it is incapable of registration. As an example of the application of that law I say that words with diminutives and suffixes added, known diminutives and known suffices, have been held not to be words, although they had for the first time seen the light, and were not words which came within the definition of the Act.

Lord Justice VAUGHAN WILLIAMS : Would you apply your definition to " Bovril " ?

Mr. WALTER : To " Bovril "—yes, my Lord.

Lord Justice VAUGHAN WILLIAMS : We know the article—it was extract of beef.

Mr. WALTER : Yes, my Lord.

Lord Justice VAUGHAN WILLIAMS : And knowing the article to which the trade mark word is to be applied do you think it suggests, or that it might suggest, that the extract came from the ox ?

Mr. WALTER : Bovril ? No, what does it mean, my Lord ?

Lord Justice VAUGHAN WILLIAMS : I am not speaking of what the whole word means. We are all agreed you know that the mere addition of a suffix, or the addition of some preliminary syllable so as to make the word a word not in common use, will not do. It will not send you home. You yourself have told us that you know.

Mr. WALTER : No, my Lord.

Lord Justice VAUGHAN WILLIAMS : Why does not " Bovril," when we once know that that to which it is to be applied is a soup extract or a meat extract—a meat extract I will say—suggest that the particular animal whose meat is employed is the ox ?

Mr. WALTER : Your Lordship remembers that there were three jurymen trying that case ; and, as three jurymen, and not as three judges, they held that this word, to three jurymen, did not have that meaning. As judges they directed themselves on the principle of the Melrose case, but as a jury they held that it did not have that meaning, if not, the decision would have been the other way. But it was always as a jury. As judges they directed themselves on the principle of the Melrose case.

Lord Justice VAUGHAN WILLIAMS : Is it not for the Judge to say : Did it not convey this idea to you, Gentlemen of the Jury ? I say, as a matter of law, this word is of such a character that it might suggest —I agree it does not suggest to you—but it might suggest an ox.

Mr. WALTER : Your Lordship remembers the way in which Lord Justice Lopes dealt with it in that very Bovril case which is reported in 1896, 2 Chancery, at page 608. What his Lordship said was this : " Now, to ascertain whether the word ' Bovril ' is a fancy word, I test it in this

way, the way with which I am most familiar. I say to myself: What would an intelligent Jury say if they were asked whether 'Bovril was a fancy word? If I had had to try the case I should have told them that they must keep in their minds that this word was placed upon the register in 1886, and that they must regard it as it stood at that time. I should have told them that to be a good fancy word it must be non-descriptive and meaningless as applied to the article to which it was intended to be applied; and if I had so told them, I am confident they would have come to the conclusion that the word was not descriptive and that it was a good fancy word. I come, therefore, to the conclusion that the Appeal ought to be dismissed." Therefore I say that the Bovril case lays down the very law which I am now putting before your Lordships, and that three jurymen in that case held that with such a direction to themselves from themselves as judges Bovril did not to those three jurymen suggest any meaning—that it was non-descriptive and meaningless.

Lord Justice VAUGHAN WILLIAMS: Was it a London Jury, may I ask?

Mr. WALTER: Yes, my Lord, it was a London Special Jury.

I have not called your Lordships' attention to the Judgment of the learned Judge in the Court below. I should tell your Lordships that the learned Judge, as your Lordships will see when I read the Judgment, found that the case is, as he considers, very near the line. Your Lordships will find the Judgment at page 451: "It will be convenient to deal first with the motion." The present Appeal is only as to the motion. "In and previously to the month of March, 1884, the Plaintiff firm were manufacturing and selling compressed drugs in a solid form and of a lenticular or bi-convex shape. On the 14th March 1884 they registered in Class 3 in respect of substances not included in Class 1 used in medicine and pharmacy the word 'tabloid' and on the 27th January, 1885, they registered in the same class the representation of the top of a box with the word 'tabloids' upon it. It was explained that this latter registration was in order to be able to register in Germany, where such registration would not be granted except in connection with a device and previous registration in England. These registrations have been renewed and are in force. The Plaintiffs have continuously made and sold compressed drugs ever since the date of the original registration of the word "tabloid." These drugs have always been made and sold of the original shape and size, but they have also been sold of various other sizes and of differing shapes, chiefly, however of a form more or less bi-convex. The list of drugs and compounds of drugs so made and sold has been extended from time to time, but the Plaintiffs have always sold their solid compressed drugs in connection with the word 'tabloid' or 'tabloids.' The registration was under the Act of 1883, and having regard to the terms of Section 64 sub-Section 1c the question is whether or not the word 'tabloid' was a distinctive fancy word not in common use at the date of registration; namely, the 14th March, 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

Mar. 28. 1904 — '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 I have described which have become so well known since the year 1884. A
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. I find in the 1848 Quarto Edition of Johnson's Dictionary the definition of tablet is :—First : A small level surface. Secondly : A medicine in a square form. And then there is a quotation from Bacon : B
'It hath been anciently in use to wear tablets of arsenic or preservatives against the plague as they draw the venom to them from the spirits.'
In the Imperial Dictionary of 1868, I find this definition (No. 4) of 'tablet.' 'A medicine in a square form. Tablets of arsenic were formerly worn as a preservative against the plague. A solid kind of electuary or C
confection made of dry ingredients usually with sugar and formed into little flat squares called also lozenge and troche, also applied to anything made up in a flat square shape as a tablet of soap.' The word 'tablet' had also been used to denote compressed drugs made up in the bi-convex shape in question by the Plaintiff firm in connection with Wyeth's tablets D
and by some other persons. The Plaintiff firm had registered the word 'tablet' for the same class, intending to use it as their trade mark, but, finding that it could not be sustained, Mr. Wellcome set about finding a new word, and 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 E
time. The case of the trade mark 'Bovril' before the Court of Appeal (in 1896, 2 Chancery Division, page 600), relieves me from a close examination of earlier cases, and give me a guide in endeavouring to determine whether or not 'tabloid' was a fancy word. The earlier leading cases of Van Duzer's Trade Mark and Leaf's Trade Mark (34 F
Chancery Division, page 623), were cases in which, as pointed out by Lord Lindley in the Bovril Case, a coined word was not under consideration at all, but ordinary English words. 'Where,' says Lord Lindley, 'you have got a fanciful use of a known word you must have a word which is obviously non-descriptive.' At page 606 G
he says : 'But I agree that a word which describes the article will not do. To my mind it is not descriptive, notwithstanding Mr. Bowers' very ingenious argument. He tries to make it out to be a descriptive word, not by taking the word, but a little bit of it, and he says that because 'Bov' may have some relation and does have some relation to 'Ox,' H
therefore 'Bovril' describes what ? I do not see that it describes anything at all.' I think I also get this from the Bovril case, that it is not necessary that the word should be absolutely unsuggestive. The word 'Bovril' was suggestive of 'Ox,' but as a whole was held not to be descriptive. The argument in the present case for the Applicants was: There I
is a word to be dealt with compounded of 'table' or 'tablet,' with a common suffix 'oid.' To the last Mr. Walter, with his accustomed skill, would not pin himself to one or the other. There were, he says, the words 'tabellae,' 'table,' 'tablet' in common use, and 'tabloid' must

be taken from part of one or other of them, and the rest of the word is made up by adding a common suffix 'oid,' meaning 'in the form of' or 'like' or 'allied to,' used in a great many English words and especially in connection with scientific nomenclature, and though part of the root or suggesting word is left out the word 'tabloid' means something like or allied to things denoted by one or other of the old words. On the other hand it was forcibly urged that the only attribute common to the things denoted by the words 'table' and 'tablet' is the suggestion of flatness on one side or other, or on both sides of the object without any notion of convexity. Suppose 'tablet' be the word supposed to have the common suffix appended it is to be noticed that the new word is not 'tabletoid' but 'tabloid,' a possible but not the most obvious formation; while if 'table' be the word, though 'tabloid' would probably be a natural way of adding the suffix by analogy to other words constructed in a similar form, the word so constructed would mean allied, not to a 'tablet,' but to a 'table,' but though solid drugs in certain forms were known as 'tabellae' or 'tabulae' there is nothing that I can find to denote convexity or compression in the word. I think the case is near the line, but treating it as a matter of fact in the particular case, 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. I agree that there is a suggestion or atmosphere of description about the word as then used, but I do not think that it can be said to have been other than a 'fancy word' as applied to goods in the class in which it was registered. The motion must, therefore, be dismissed." Now, that is the whole of the Judgment so far as relates to this Appeal. May I read again the passage on page 453, between lines F and G, where the Judge says: "On the other hand, it was forcibly urged that the only attribute common to the things denoted by the words 'table' and 'tablet' is the suggestion of flatness on the one side or the other, or on both sides of the object, without any notion of convexity." I say that is an absolutely fallacious way, and an absolutely wrong way, of looking at the word. You have to look at the word "tabloid" with ~~that~~ knowledge that "tablet" is the term which has been applied for years to the goods to which the term "tabloid" is now applied, and I say, with that knowledge which, as jurymen you would have to take into consideration, it would divorce your mind absolutely from the idea of mere flatness, which is indicated there by the argument on the other side as it impressed the learned Judge. You have to take it that it was in connection with compressed drugs of a bi-convex form to which the term "tablets" had been applied; those are the articles to which the term "tabloid" was subsequently applied, and I say with that knowledge it is impossible, as Jurymen, to come to the conclusion that the word "tabloid" was not, in the exact sense in which it is used in the "Bovril" case, a descriptive word; and it was not "a distinctive fancy word, or words not in common use," and that therefore the trade mark is bad, and must be removed from the register.

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Mr. GRAY: My Lord, Lord Justice Cozens-Hardy put a question to my friend, Mr. Walter, a few minutes ago with regard to the use of the word "tabloid" as applied to an article different from, or the same as, the article to which "tablet" was applied. May I add a few words with regard to that? The article as made before the year 1884 was called A "tablet," and Messrs. Burroughs & Wellcome were desirous, of course, of making up their articles and of making up their drugs in that form—that is, they were desirous of making the drugs in tablet form. I say the natural description to be applied to the article then, if Mr. Wellcome were desirous of coining a new word, was "tabloid." It did not (as I rather B gather Lord Justice Vaughan Williams some time earlier suggested) mean that there was something different from tablets in it, by reason of the ending "oid." I suggest that it merely meant that it was making up the drugs in the form of tablets.

Lord Justice VAUGHAN WILLIAMS: Lozenges are very old, are C they not?

Mr. GRAY: Yes, my Lord.

Lord Justice VAUGHAN WILLIAMS: Is a lozenge a convenient mode—or is it used frequently as a convenient mode—of making up drugs in a compressed form? D

Mr. GRAY: If the lozenge were small enough I should have thought so. "Tablets," as applied to compressed drugs, were known as regards, roughly speaking, size.

Lord Justice VAUGHAN WILLIAMS: I hear what you are saying about size; but the ordinary word for compressed drug was E "lozenge," was it not?

Mr. GRAY: I cannot say that it was ever applied to a compressed drug. I do not know of its being so, though it may have been.

Lord Justice VAUGHAN WILLIAMS: What were lozenges?

Mr. GRAY: My association with lozenges was as regards sweets, F not as regards medicine at all.

Lord Justice VAUGHAN WILLIAMS: I daresay the mother may have told the child that the cough lozenge was a sweet, but it is not always so.

Mr. GRAY: That is the only form in which I took it. G

Lord Justice VAUGHAN WILLIAMS: Was it not a compressed drug, really?

Mr. GRAY: No, my Lord; it was not a compressed drug.

Lord Justice VAUGHAN WILLIAMS: Did you not find that out when you had taken it? H

Mr. GRAY: No; it was not a compressed drug, at all events.

Lord Justice VAUGHAN WILLIAMS: There were plenty of others, you know.

Mr. GRAY: Yes, my Lord, there were plenty of other names, of course. I

The only question, I take it, which your Lordships have to decide in determining whether or not the word "tabloid" is a registrable word under the section in the Act of 1883 is whether or not the word is obviously non-descriptive of the article to which it was intended to be

applied. There is one matter, I submit, which throws a very strong light upon the question, namely, the circumstances under which Mr. Wellcome states that he coined the word, coupled with the history of the use of "tablet" for medicinal purposes before that date. May I just call your A Lordships' attention to what Mr. Wellcome said as to the circumstances under which he coined this word? It is given on page 30 of the evidence, and begins at Question 28: "I think in the year 1884 you thought of having some new name for your compressed medicines?—Yes. Q. At that time you told my Lord you were using the word 'tablets'?—Yes. Q. How did you B set to work to find the new name?—I passed through my mind all the letters and syllables I could think of. I wanted to coin some word that would be euphonious—that is, something that would be pleasing to the ear and that would be easy to remember. Q. What was the result of your efforts?—The result was the word 'tabloid.'"

C Lord Justice VAUGHAN WILLIAMS: You do not rely apparently on that which Mr. Justice North seemed to rely upon in the Triticumina case, the intention, or the supposed intention, of the inventor? The question is not what was passing in the mind of the inventor, but what would pass in the mind of the public when they heard the name.

D Mr. GRAY: I am relying on it to this extent: that I say the intention of the inventor would not be conclusive against him; but the intention of the inventor would, at all events, be one point to be considered in considering whether the word was a true fancy word or not. I will tell your Lordship why.

E Lord Justice VAUGHAN WILLIAMS: In choosing a fancy name it is hardly ever that the fancy name is chosen at mere haphazard, as if you were putting your hands into a bag full of counters and numbers, and happened to draw out a particular counter or number. That is not a reasonable supposition of the way in which names are chosen. Is that F not right?

Mr. GRAY: Yes, my Lord, of course it is.

Lord Justice VAUGHAN WILLIAMS: Really, a name is chosen, in 99 ~~times~~ cases out of 100, in consequence of a train of thought that arises in connection with the name, and in connection with the nature of the thing. G Is that not right?

Mr. GRAY: Yes, my Lord, I agree.

Lord Justice VAUGHAN WILLIAMS: Do you not agree that the mere fact that you can trace the train of thought to and fro between the articles in question in the inventor's mind is not sufficient to make a bad H trade name?

Mr. GRAY: Of course, I say it is not sufficient, if, in fact, it is a fancy word.

Lord Justice VAUGHAN WILLIAMS: It is just as in the case when you are going to name a racehorse. You think of the immediate I ancestors on one side or the other of the racehorse, and you then take a name that suggests both. That is a fancy name, but it is not chosen haphazard.

Mr. GRAY: No, my Lord, of course not.

Lord Justice VAUGHAN WILLIAMS: Just in the same way it

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cannot be suggested that the human mind is such that if you have to invent a name for a soap, your mind would be likely to run in the same groove as if you had to invent a name for an extract of beef. Nobody would ever call soap "bovril," would they ?

Mr. GRAY : Not as a descriptive word, certainly not. A

Lord Justice VAUGHAN WILLIAMS : So I think. Then I think nothing of the fact that the name is one which the characteristics of the article may have suggested to you. That does not make it bad.

Mr. GRAY : No, my Lord. I am not suggesting that.

Lord Justice VAUGHAN WILLIAMS : What does make it bad is B that the name should describe a characteristic of the article.

Mr. GRAY : Yes, my Lord.

Lord Justice VAUGHAN WILLIAMS : I agree that one characteristic amongst many will do, but it is not in my judgment a practical or reasonable thing to do to lay down any rule which predicates the C possibility of the human mind arriving at a fancy name without any relation in his mind or his thought, to the thing which he is going to give the name to.

Mr. GRAY : I am not suggesting for a moment, my Lord, that because Mr. Wellcome may have had in his mind a desire to get a descrip- D tive word, therefore, if it is not descriptive it is not a good fancy word. I do not propose to argue that.

Lord Justice VAUGHAN WILLIAMS : No. Then take the answer of this witness that you have just quoted. He was thinking, "What word shall I take to distinguish my compressed lozenges from the E lozenges of other vendors of similar substances ?"

Mr. GRAY : Yes, my Lord.

Lord Justice VAUGHAN WILLIAMS : And he says that he chooses that word as a word that does not mean anything, and he puts out of his mind that what he is giving that name to is a compressed F drug.

Mr. GRAY : Now, my Lord, I am not forgetting for one moment the fact that Mr. Wellcome was one member of the public, and I propose to submit to your Lordship that Mr. Wellcome deliberately chose a descriptive word. He chose that word G which he knew perfectly well by reason of what had taken place before, would be simply descriptive of what was known as tablettes. Your Lordship will remember that for many years before 1884 "tablettes" had been applied and the word was universally known not only to the trade but to the public, and not least of all to Mr. Wellcome himself, H because in their own catalogue, their own price lists, there appears the word "tablets" from beginning to end of the price lists of each year. Mr. Wellcome had been desirous of having his goods known by that word. In the 1882 price list, and the advertisements in the "Chemist and Druggist Diary," there appears the word "ovoid." Mr. Well- I come himself stated in evidence that that word suggests a shape, that word must have been present to Mr. Wellcome's mind at the time as made up from the two expressions "ovo" and "oid." Mr. Wellcome I suggest simply took the word tablet and deliberately made it descriptive

by adding the word "oid." "Ovoid" does not mean a little egg; it means the shape of an egg. "Tabloid" means the shape of a tablet. My submission to your Lordship is that if "Tabloid" remains on the register as a good trade mark either under the 1883 Act or the 1888 Act, then every word to which "oid" is added is a good trade mark. I say if that is so it was never the intention of the Legislature, and it is totally at variance with all the authorities that that form of word should be allowed as a trade mark.

Lord Justice VAUGHAN WILLIAMS: Your inference is too wide. Your inference in 1904 might be a just one, but that would not make it necessarily a just inference in 1884.

Mr. GRAY: My Lord, there is not one word of evidence that there is any difference as regards the use of the suffix "oid" between 1884 and 1896.

Lord Justice VAUGHAN WILLIAMS: May I, as a partially educated Englishman, say that the word "tabloid," as a word in common use in the English language, was totally unknown to me in 1884.

Mr. GRAY: Yes, my Lord——

Lord Justice VAUGHAN WILLIAMS: I had never heard of it. I suppose one could probably, if one had been at school, say from the derivation what sort of meaning added to the word "tablet" the suffix "oid" would suggest; but I do not think I ever heard the word "tabloid." I doubt whether you would find it in any literature of the period. We have heard a good many quotations by Mr. Walter, but I do not recollect one.

Mr. GRAY: My Lord, the word "ovoid," as Mr. Justice Byrne has said, was known.

Lord Justice VAUGHAN WILLIAMS: I am not denying that at all, but I am speaking of "tabloid"; and there is the fact, which you must have at the beginning, that there were some matters in respect to which one did find words with the suffix "oid"; only that is not good enough for you.

Mr. GRAY: What I am submitting is that the addition of the suffix "oid" for the purpose, for which, I submit, it has been added in this case, was as well known in 1884 as it was in 1904.

Lord Justice VAUGHAN WILLIAMS: I cannot agree with you.

Mr. GRAY: There were many such words in existence at the time. I have called attention to the word "ovoid," which, related to "ovo," means exactly the same thing as what I suggest "tabloid" means related to tablet. Assume for the moment that the problem put before a literary man in 1884 was to invent a word which would aptly describe "tablet form."

(Their Lordships consult.)

Lord Justice VAUGHAN WILLIAMS: Now I will give you a word which I can say from my own knowledge was in use long before 1884—aneroid. What do you say is the exact meaning of the termination "oid" there? To begin with, it is an adjective term applied to a barometer, I take it.

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Mr. GRAY : The form of barometer which has no air—without air. I think your Lordship will find that is the very definition given in the dictionary—that shape of a barometer which has no air.

Lord Justice VAUGHAN WILLIAMS : Will you lend me one of the many dictionaries ? A

Mr. GRAY : Let your Lordship put the problem in 1884 in this form——

Lord Justice VAUGHAN WILLIAMS : You have not yet answered my question, I think. I am rather glad you are not quite right because it made me think that I was very wrong. " Aneroid : denoting a B barometer by which the pressure of air is measured without the use of quicksilver or other fluid."

Mr. GRAY : Your Lordship will find that in that word as in other words " oid " means the shape or the form. Then the suffix is added here in the same way. It may very well be that perhaps I did not put the C proper meaning of the other part of the word. That " oid " is added in the same way as in " ovoid " I submit is clear. I have a recollection that in one of the dictionaries that was the meaning given—I do not remember which one it was. Would your Lordship consider what would be the problem put to a literary man in 1884 if you asked him to find an aptly D descriptive word to designate the expression " tablet form." My submission to your Lordship is that there could not have been a more aptly descriptive word than " tabloid."

Lord Justice VAUGHAN WILLIAMS : Add this to your description. You say he was asking—— E

Mr. GRAY : A literary man.

Lord Justice VAUGHAN WILLIAMS : A literary man who did not happen to be a scholar. You admit that ?

Mr. GRAY : I cannot say that I admit that, my Lord.

Lord Justice VAUGHAN WILLIAMS : I suggest to you that, to F come to the conclusion which you suggest, that would be a convenient description.

Mr. GRAY : It seems to me in the earlier words that would be a most apt description. My Lord, I could not help overhearing a remark that was made just now, when I suggested that problem. Mr. Moulton G suggested the word " tabletoid." I suggest that would be absolutely departing from the principle adopted before 1884. Fungusoid is fungoid ; rhombusoid is rhomboid. A word occurs to me at the moment. Your Lordship knows a drug called antipyrin. To coin that word so as to have the use of the suffix " oid " you would call it antipyroid. Can it be H suggested that anyone seeing the word antipyroid would not think it was something of the form of antipyrin, or like antipyrin ?

Lord Justice VAUGHAN WILLIAMS : Do you suggest any difference between " table " and " tablet " ?

Mr. GRAY : I say " tablet " is the diminutive of " table." I

Lord Justice VAUGHAN WILLIAMS : Taking your criticism on Mr. Moulton's observation just now, you see your distinction of the " fungus " and " fungusoid " is not appropriate, because in dropping out the final syllable of " fungusoid " you are keeping the whole root and

leaving out nothing that is material; whereas in dropping the final syllable of "tablet" you are leaving out something that is material—something that suggests the diminutive.

Mr. GRAY: I am leaving out something that would be material in many circumstances.

Lord Justice VAUGHAN WILLIAMS: Yes, but at the same time one is asking oneself the question whether it ought to be tablet or tabloid?

Mr. GRAY: Yes, my Lord.

Lord Justice VAUGHAN WILLIAMS: If tablet means a little table, then, if you make your diminutive tabloid, you are leaving out of the original word all that goes to introduce the diminutive idea.

Mr. GRAY: Then, my Lord, all it comes to, if I may say so, is that as regards tabloid it may mean something connected with a table or something connected with a tablet; and in order to find out what it does mean one has to look at what was done before 1884 and the use of the word tablet in connection with medicinal drugs. It is not a case of the use of the word without any prior history. Everything pointed, beyond dispute, as regards medicinal drugs, to "tablet" and not to "tabloid." Or take the use of the Latin word "tabella."

Lord Justice VAUGHAN WILLIAMS: You might say, "It is better to have the support in a tabloid form."

Mr. GRAY: In the form of small compressed drugs?

Lord Justice VAUGHAN WILLIAMS: I am not speaking of compressed drugs at all. That would depend more or less on the subject matter which you are speaking of, would it not?

Mr. GRAY: Yes, my Lord.

Lord Justice VAUGHAN WILLIAMS: If I were speaking of a gun to be used on board a ship, and used under conditions that you could immediately withdraw the gun from exposure—you might have hydraulic machinery by which you could instantly put the gun out of danger under the protected deck—if I said that the support of the gun was in tabloid form you would say it was in the form of a table, would not you?

Mr. GRAY: My Lord, it would have no meaning.

Lord Justice VAUGHAN WILLIAMS: No meaning, you say?

Mr. GRAY: No meaning as regards that, because "tabloid" then had acquired a proper meaning in one particular direction.

Lord Justice VAUGHAN WILLIAMS: I have now sent for the first volume of the dictionary of Mr. Murray, which you probably, after Mr. Walter's quotations, will accept as a good dictionary? Here is his definition of "aneroid," which, I am happy to say, shows me I have not quite forgotten my Greek grammar: "Aneroid, adjective and substantive, Greek, a privative, neros, wet."

Mr. GRAY: I was wrong with regard to the "neros"; I meant without fluid, not without air. That means a form of barometer which works without the help of fluid.

Lord Justice VAUGHAN WILLIAMS: I remember now, though I had forgotten it, that in the very passage that Mr. Walter gives us, the

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passage in Dr. Murray's dictionary upon the suffix "oid," it quotes "aneroid," and accounts for it, I think you will see.

Mr. GRAY : Yes.

Lord Justice VAUGHAN WILLIAMS : But I will come to it in a moment. Will you go on ?

Mr. GRAY : My Lord, I without hesitation challenge my friend to produce a single word which has been held to be a good trade mark under either the 1883 Act or the 1888 Act in which every single syllable in the word is capable of an ordinary Nuttall meaning. That, I submit, completely distinguishes all the trade marks that have been held to come within the Act and those that have not come within it. In the Bovril case the whole decision was upon the ground that except a somewhat shadowy directing towards something to do with the ox—the first part of the word, I mean—the second part had no meaning at all, and that the two together conveyed no meaning. I again submit that if a word like "tabloid" is allowed to remain on the register, there is almost no single word that one can conceive ~~almost~~, to which the suffix "oid" is attached, that is not a good trade mark.

Lord Justice VAUGHAN WILLIAMS : Have a London Jury yet found that "Oxo" does not suggest an ox ?

Mr. GRAY : No, my Lord ; I believe that matter is still in abeyance, but I rather fancy in view of the Solio case it is conceivable that Oxo would be a good trade mark.

Lord Justice VAUGHAN WILLIAMS : Is it in fact registered ?

Mr. GRAY : I believe it is. I think my friend, Mr. Sebastian, will be able to tell your Lordship better than I can.

Lord Justice VAUGHAN WILLIAMS : Is it registered, Mr. Sebastian ?

Mr. SEBASTIAN : It is my Lord, and it is a very valuable mark, I think.

Lord Justice VAUGHAN WILLIAMS : And has it been held that it does not suggest an ox :

Mr. SEBASTIAN : I do not think anybody has questioned it up to the present time.

Mr. GRAY : Of course your Lordship sees that "Oxo" stands on a different ground from "tabloid" if our submission is correct, because the second syllable of "Oxo" has no meaning at all ; and the Solio case has decided that that form of word is not certainly and of necessity descriptive, and in the case of Solio it was invented.

Lord Justice COZENS-HARDY : Does your argument involve this, that assuming Oxo could be registered Oxoid could not ?

Mr. GRAY : It depends altogether on what it was to be applied to, I should think. I submit it could not be registered if it acts as any description at all of the article to which it was applied. One might very well imagine, for instance, that Oxoid might apply to paper.

Lord Justice VAUGHAN WILLIAMS : To what does "Oxo" apply ?

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Mr. GRAY : I understand it applies to the same thing as that to which the Bovril Company applied the word " Bovril."

Lord Justice VAUGHAN WILLIAMS : Extract of beef?

Mr. GRAY : Extract of beef. I am not of course deciding whether it is a good word or not. I say so far as the second syllable is concerned it has no meaning.

Lord Justice VAUGHAN WILLIAMS : But you say according to the rules that you lay down, and which you submit are established by the cases, that Oxo ought not to be on the register, or do you say it ought?

Mr. GRAY : I do not think I did say so, my Lord.

Lord Justice VAUGHAN WILLIAMS : Which way do you say? You have been telling us what the rules are which have been established by the cases which have been cited. Ought " Oxo " to be registered, according to your view, or not?

Mr. GRAY : According to my view it ought not to be registered, but what I say is that there would be an argument in favour of its registration which does not exist in this case.

Lord Justice VAUGHAN WILLIAMS : That is, that it does not end in " oid."

Mr. GRAY : No, my Lord, I say that the ending has no meaning at all, and that *non constat* a syllable with a meaning and one without a meaning would have a meaning together.

Lord Justice VAUGHAN WILLIAMS : Now shall I ask you again what you think is the meaning of the final syllable, ~~then~~, of " oid," the o. i. d. Do you suggest there is any suffix in the word " aneroid "?

Mr. GRAY : Yes, my Lord.

Lord Justice VAUGHAN WILLIAMS : What is the suffix and what does it mean?

Mr. GRAY : I say the suffix is " oid " derived from the Greek " eidos," and the whole word itself means the form of barometer which is actuated without the use of fluid at all.

Lord Justice VAUGHAN WILLIAMS : Yes, I quite agree, but that is not quite the same application of the word.

Mr. GRAY : It is the same thing. " Tabloid " is a form of tablet which is made of a compressed drug.

Lord Justice VAUGHAN WILLIAMS : Do you suggest it is without anything in a moist form?

Mr. GRAY : No, my Lord. If tablets were made before in a moist form then it would include that, of course. The result comes from the first part of the word " aneroid," and not from the second part at all.

Lord Justice VAUGHAN WILLIAMS : No.

Mr. GRAY : You will remember " tablets " were known to absolutely everybody, and the only word that could be in the minds of the trade or the public in 1884——

Lord Justice VAUGHAN WILLIAMS : I quite agree 1884 is the crucial date that we have to look for, and we cannot take into consideration " Punch " of 1903.

Mr. GRAY : No, my Lord, I am not on that point. What I desire to say is that " tablet " was a word that was well known, and was attached by

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everyone to this form of compressed drug. So that at that time in 1884 if anyone came along and applied to the same article "tabloid," I say it would be impossible to imagine that anyone using the word at that time would not at once associate it with "tablet."

Lord Justice VAUGHAN WILLIAMS: How long had the name "tablet" been used by these people before 1884?

Mr. GRAY: I forget for the moment, but for some considerable time.

Lord Justice VAUGHAN WILLIAMS: What is the date of their first registration?

Mr. GRAY: I think it was 1883, but it was used before that.

Lord Justice VAUGHAN WILLIAMS: I want to hear evidence of the prior user if you are relying on anything prior to that date.

Mr. GRAY: I will call attention to the 1882 price list of the "Chemist and Druggist," and their advertisement in 1882.

Lord Justice VAUGHAN WILLIAMS: If I call some article by a name for a year or two years, but under circumstances that although some of my immediate customers may have come to know that I call these goods by this name, the public generally do not know the word in that sense at all, that will not prevent my registering it.

Mr. GRAY: But it never has been suggested that "tablets" were not well-known before 1884 as applied to these articles—universally known.

Lord Justice VAUGHAN WILLIAMS: I am not dealing with that at all. I daresay you are quite right there, but I was only asking you an abstract question. If a trader called some article, to distinguish it, by an invented name, there is no exact limit of time within which he must come in order to enable him to register. I agree he cannot come and register after the word has become a familiar public word, but there is no other limit of time, is there?

Mr. GRAY: No, my Lord. All I wish to put before your Lordships is that "tablet" was well known both to the trade and the public before 1884.

Lord Justice VAUGHAN WILLIAMS: That is what I want evidence on.

Mr. GRAY: On page 44 of the evidence, at the beginning of the cross-examination of Mr. Wellcome, Question 193: "Q. When do I understand you commenced business in this country?—My firm was founded in 1878. Q. You originally came over here as agents for Wyeths?—Not in the ordinary sense as agents. Q. But you sold Wyeths' goods?—It was an alliance or sort of partnership in which we shared the profits." Then Question 197: "Q. I wish I could have a simple answer to my question. Did you come over here and commence business selling Wyeth's Compressed Tablets?—We did. Q. How long did you continue to sell those?—I do not remember how long we continued to use the name Wyeth. Q. It was for some years, was it not?—Yes, for some years. Q. Had you any trade marks at that time?—We registered trade marks almost immediately after founding our business, or at least identical with it. Q. What trade marks were those?—Those were

compressed tablets." Your Lordships see at Question 196, this: "Q. May I ask you again did you start business here selling Wyeth's Compressed tablets?—We sold products under the name of Messrs. Wyeth, and registered the name 'Wyeth' as a trade mark, which was held by our firm."

A Lord Justice VAUGHAN WILLIAMS: That must make it identical with the time of registration.

Mr. GRAY: No, my Lord, the registration of "Wyeth" they began with in 1878, according to Question 193.

Lord Justice VAUGHAN WILLIAMS: "We registered trade marks B almost immediately after founding our business or at least identical with it."

Lord Justice COZENS-HARDY: You do not contend for the use of the word "tabloid" by Burroughs, Wellcome & Company before registration.

C Mr. GRAY: No, my Lord, I do not suggest that.

Lord Justice COZENS-HARDY: Then I do not see the point you are making.

Mr. GRAY: The point I desire to make is that "tablet" was then universal and widely known to the trade and public to designate this D particular form of drug. Therefore I say the attention of the public was attracted in one, and only one, direction when they saw the word "tabloid." It was descriptive at that time, because it suggested not "tablet" at all, but a form of compressed drug well known by the name "tablet." I submit there was no possibility of confusion between "table" E and "tablet." For that reason I say this word is on all fours with "fungus-oid," "rhombus-oid," and "ovum-oid," and all the other words. It is quite true it may be an addition to "table" under other circumstances. I say the evidence of what took place before 1884 makes it beyond question that it must apply to "tablet," and "tablet" alone, and not to F "tabloid." In addition to Burroughs, Wellcome & Company having deliberately chosen a descriptive word, as a member of the public one has to look at the action of dictionaries in 1884, not for the purpose of seeing whether the word then had become descriptive, but for the purpose of seeing whether other members of G the public looked upon it as a descriptive word and gave an ordinary natural meaning and derivation to it. Your Lordships have heard a large number of dictionaries mentioned. In some cases the moment the word was brought to their notice, certainly soon after 1884, they at once attached a meaning to the word, put it in the dictionaries, H gave a derivation of it, and described it accurately as we say. Your Lordships see that Mr. Wellcome saw fit to point out to the compilers of dictionaries when it was never suggested in any of the dictionaries that that was not the meaning, but it was added in some cases that "this is a proprietary name," or "this is a trade mark." That does I not affect the point upon which this evidence was given, namely, that the people who compiled those dictionaries from time to time, as the word came before them, attached a descriptive meaning and gave a derivation which was consistent with that descriptive meaning. Now what does Mr. Wellcome do himself after 1884? There again, I use what happened after 1884 merely as

Mar. 28, 1904 evidence of what was ~~know~~ known at the time. For at least four years after the word was registered it was incontestible that Messrs. Burroughs & Wellcome used the word descriptively and not as a trade mark at all. All this, I submit, points to the fact that the word was a descriptive word; that it had for tablets been a proper and apt description of what were known and sold as tablets before that.

My Lords, to sum up what I say it is this: The word is obviously descriptive; it is not merely not obviously not descriptive, it is obviously descriptive, because it is the addition of a well known suffix in a well known and ordinary way, and with its ordinary well known meaning. The evidence of that is, first of all, Mr. Wellcome's own action in the coining of the word itself. Secondly, the fact that in the advertisements for four years it was used descriptively. Thirdly, that the dictionaries from time to time adopted the word in their editions, describing it and giving it the meaning which we say is part of the English language—giving it its proper meaning, and giving its derivation in the form of the derivation of other well-known words, such, for example, as "fungoid," "rhomboid," and numerous other similar words which existed before the date of registration.

Mr. MOULTON: May it please your Lordships. Before going into any question of the facts of this case, which appears to be in many respects a stronger case than any that I remember to have come before the Courts, I want to review a few of the fundamental principles of trade mark, and trade mark legislation, because it appears to me that a great deal of the very able arguments of my learned friends have been directed against completely false issues.

Now, my Lords, the first principle that I wish to submit to the Courts is this: that the question of the propriety of the registration is to be decided in the year 1884 when the mark was registered. The question is whether they were right in admitting it to the privileges of registration; and, secondly, that no matters subsequent thereto which have been shown to have grown up subsequently can by any possibility affect the decision which your Lordships have to give in this case. It was either right in 1884 or it was wrong in 1884. If the Comptroller was right in putting the mark on he must have done it with the knowledge of 1884, and it is right in being there. The only thing that can take a properly registered mark off the register is the behaviour of the owner. Of course if the owner used it improperly or fraudulently, or if he abandoned it, or did anything of the kind you might bring evidence of that, not to displace the registration, but to destroy the effect of the registration, ~~and~~ but no such suggestion is made here. Let us take as an example Mr. Punch talking about "tabloid" operettes in 1903, that is unquestionably a thing which has grown up from the success of Messrs. Burroughs & Wellcome, who have made their tabloids known all over the world, and this is one of the cases in which the attack on "tabloid" is due to the success in trade of the owners of the trade mark "tabloid." Well, matters of that kind must be mere prejudice if they are brought to try to influence the mind of the Court, which has to decide the matter as though it were challenged on

the day on which the mark was registered. My Lord, I do not think that that proposition can seriously be disputed.

Lord Justice VAUGHAN WILLIAMS: No, I think both Mr. Walter and Mr. Gray both said that we must take the day of registration—in fact, I am sure they did.

Mr. WALTER: Certainly, my Lord.

Mr. MOULTON: May I just go to one other point which is really fundamental here, and which, I think, shows that a large portion of their arguments were directed to a false issue; my learned friend, Mr. Walter, especially said, and said repeatedly, distinctive, and if distinctive not descriptive.

My Lords, it is no objection to a trade mark that the trade mark owner has not used it on all his goods. If the trade mark owner uses a particular trade mark on some only of his goods, and he meets with great success, the trade mark will get to denote not only the origin, but the particular kind of goods. Now let me give your Lordships an example. Take "Kodak" as being about as fancy a word as possible. That Company, Kodak Limited, applied "Kodak" as the mark of its cameras, but it was registered, and a better registration could not be. But "Kodak" marking the cameras through the success of the Company got Kodak so well known that now you talk about "Kodaking" a thing, or a "Kodak tour," and all that sort of thing.

Lord Justice VAUGHAN WILLIAMS: Is that an invented word?

Mr. MOULTON: A purely invented word, my Lord.

Lord Justice VAUGHAN WILLIAMS: No, I did not mean that, I was referring to the tour and the other familiar word you used just now, and it occurred to me whether those were invented words.

Mr. MOULTON: I can assure your Lordship that in this case I am guilty of no ingenuity.

Lord Justice VAUGHAN WILLIAMS: Is there a verb to Kodak?

Mr. MOULTON: Oh, yes, my Lord, that was brought up in an exactly similar attack on the "Kodak" trade mark before Mr. Justice Swinfen Eady who supported the mark, and there they brought forward exactly the same suggestion. They brought instances in modern literature of the word "Kodak"—"to Kodak." I was only quoting from memory really. May I point out what I humbly submit to the Court is the vice of the argument which has been advanced by my learned friends with regard to its designating goods. If you could show that Messrs. Burroughs & Wellcome had ever applied this to goods not coming from them then you would have made a good case, but it is no objection to the use of a trade mark that you should only apply it to some goods that come from the owners. The test of right and wrong is whether it has told a falsehood as to origin, not whether it has told something more than the truth as to origin. If your Lordships will just allow me to explain myself there—I am not sure that I have made myself perfectly clear. What I mean to say is this: take the case of "Kodak," because I will get away from this one, I want to deal with the simple point of user. That word "Kodak" was their trade mark, they had the right to put it

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on their goods, and nobody else had; but they chose to put it on certain only of their goods, and those became very largely used, and people looked at "Kodak" to see that the name was there. They may describe those goods which have the word "Kodak" on as "Kodaks." They are still using the word as indicative of origin. They may by user use it as indicative of particular goods with that origin, but there is nothing the least contrary to the idea of trade mark, that it should describe not only the origin but the particular class of goods which comes from that origin. May I give a case which would be familiar to this Court?

Lord Justice VAUGHAN WILLIAMS: I should like to say that I think you are confusing two things in your present observations. You take this word "Kodak," and talking about that you say you may first use it as referring to cameras only, the goods of the Company; and presently you may apply it to all goods of the Company; and then you say that if the Company (I am speaking now of the Kodak Company) had applied the same word before they registered to goods other than their own that would be fatal? That is what I understood you to say.

Mr. MOULTON: Yes.

Lord Justice VAUGHAN WILLIAMS: I quite agree with you, but that does not show that the mere fact that they have not done so puts them at large to use a distinctive word.

Mr. MOULTON: No, my Lord. That is why I thought I had not made myself clear about it. We will say they registered "Kodak" for cameras, or for cameras and other things, but they used it for cameras. The word "Kodak" got to be known to the public as a camera from them, and a Kodak of a particular size—it got the name of the article from subsequent user, but never the name of an article which did not come from them.

Lord Justice VAUGHAN WILLIAMS: There I quite agree.

Mr. MOULTON: That is all I meant.

Lord Justice VAUGHAN WILLIAMS: But if instead of using the word "Kodak" they had used the word "camera" itself, the fact that they never applied the word "camera" to any goods in their catalogues except their own—if you turn to "camera," you only find the Company's own goods—that does not help them a bit, if "camera" was elsewhere used.

Mr. MOULTON: No, my Lord. I am assuming good registration, but it seems to me a great deal of the argument is a suggestion, if the registration be good that still, you have used it as applying only to a particular thing.

Lord Justice VAUGHAN WILLIAMS: I do not think that is a fair view of the argument against you. I think you are killing a man in buckram.

Mr. MOULTON: I am very pleased, because I was going to give your Lordships the word "vaseline." The name "vaseline" was unquestionably applied only by the Cheseborough people to petroleum jelly, and it got the meaning of petroleum jelly. They said: "We registered it as soon as we used it, and it never meant anything but the

petroleum jelly that came from us." All I say is this: that we have here, in fact, proof that in the whole of our trade, not only by us, but I will show your Lordships presently by the whole of the trade, from and after that registration "tabloid" has never meant anything excepting goods coming from us.

Lord Justice COZENS-HARDY: You are departing, as it seems to me, from your first principle. You are not now in 1884; you are in 1904. It is quite true, I have no doubt, at the present time, that is so; but I think you must go back to 1884.

Mr. MOULTON: I would sooner go back to 1884, but I could not help feeling that I must refer to my learned friend's argument, for he has quoted these dictionaries.

Lord Justice COZENS-HARDY: Speaking for myself, that did not impress me at all.

Lord Justice VAUGHAN WILLIAMS: I should say exactly the same thing. It made no impression on me whatsoever, and I do not think Mr. Walter thought it did.

Mr. MOULTON: Now, my Lord, I go back to 1884. I had no other object than just to bring it back to that. What is the position at that time? Messrs. Burroughs & Wellcome wished to have a word which should be a trade mark which should be distinctive of their goods, and they invented that word "tabloid." What is the real issue? The real issue, and formal issue, is, with all due respect, I think, Aye or No; was "tabloid" a distinctive fancy word not in common use? That is the actual form of the issue taken from the Statute. Some of the elements of that issue we can dispose of at once. It was not in common use, because it is admitted that it never had been used either by Messrs. Burroughs, Wellcome & Co. or by anybody else at the date of the registration; so that "Not in common use" is clearly so. Now "a distinctive fancy word." My Lords, if it was not in common use at all—not used at all—it was distinctive. I have always——

Lord Justice COZENS-HARDY: That is a doubtful proposition, surely.

Mr. MOULTON: May I put it this way? By adoption by Messrs. Burroughs & Wellcome it could be made a distinctive word. Of course, my Lords, if the word was a word which had a meaning to it—if it was a word which, for instance—let me take an example.

Lord Justice COZENS-HARDY: "Uneeda."

Mr. MOULTON: "Uneeda" was rejected for another reason: "Uneeda" was held to be simply a mis-spelling for: "You need a." It was considered to be really not a separate or distinctive word at all; it was merely, shall I say, a word in disguise. Just in the same way it was classed as the same type of thing as "Cheapandgood" and "Waukenphast," and the cases like "Pearl." A man spelt "Pearl" "P-i-r-l-e," and it was held that mis-spelling did not make it at all a good word. All that class of words I am not dealing with at all. Now I suggest to your Lordships if you had taken a Jury in 1884 and put the word "T-a-b-l-o-i-d" before them, they would not have known what it meant, and it would have been a fancy word. If it is a fancy word not in

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common use, I think then we can show that using it, it could be used distinctively——

Lord Justice VAUGHAN WILLIAMS : You are gravitating back again to the heresy you rejected just now. I thought when you were talking about the "Kodak" that you were gravitating towards the heresy that if you had used a word only for your own goods, it does not matter that other people use it more or less. I do not agree with that at all.

Mr. MOULTON : I did not quite catch what your Lordship said owing to the noise behind me.

Lord Justice VAUGHAN WILLIAMS : What I say is this—for the second time you seem to me in your argument to come back to an argument of this sort—Messrs. Burroughs & Wellcome applied this word as a fancy word to their goods, and so made that a distinctive name ; and then you went on to say that having made it a distinctive name in 1884 it did not matter, and was not a good objection, that the word happened to be a word which generally was used in the English language.

Mr. MOULTON : It does, my Lord. I am coming to the point as to the origin of the word, and as to its position with regard to the language directly. I am only now seeing how much I have got to argue that it was a word not in common use because it did not exist. I am only going to deal with the point now whether it was a distinctive fancy word. With regard to the word "distinctive," if it is a fancy word, not in common use, and is taken as a distinctive trade mark, then it appears to me that the word "distinctive" does not add much to the words "fancy word not in common use."

Now I want to deal with the question as to whether this word is a word which can fairly be called a fancy word. With regard to this, the history of the decisions under this Act must be kept in mind before you can apply the cases. There is no doubt that the dominant case before the Courts for a long time was the case of Van Duzer before the Court of Appeal, which dealt with the words "Melrose" and "Electric." The authority of that case was supposed to extend to propositions much wider than I have always thought that it extended to, and which ultimately, I think, the Courts accepted.

Lord Justice VAUGHAN WILLIAMS : I think nobody says now, as was said in Van Duzer's case, that to make a good fancy word, the word you use must be absolutely meaningless. I do not think anybody says so now, and I did not understand Mr. Walter to argue that.

Mr. MOULTON : No, my Lord, he did not. I think the Courts did rather suppose that that was the effect of Van Duzer's case till the Bovril case came up. The Bovril case was argued, and I remember arguing it very well, I said, Fancy need not be idiotic fancy, and it need not be unguided fancy. It may be fancy that you can understand, and that you can see what has suggested it. I said, The question is whether the word is a fancy word ; and the argument against me in Bovril was that anyone could see that it was suggested by "bov.," pertaining to an ox. I said, suppose it was. "Bovril" is a fancy word, and if you went to a jury on the subject of "Bovril," they would not know what "bovril" means.

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Lord Justice COZENS-HARDY : "Fancy" means something more than new and unknown, does it not ?

Mr. MOULTON : There may be new words possibly which are not fancy words—there may be, but the fact that it is a new word goes a long way in establishing that it is a fancy word. That was the very point I was coming to. In Van Duzer's case the fancy had to be got by the user. In the case of a new word it is born a fancy word as a rule. In Van Duzer they had to say, You have taken a word in the English language, and you have got to prove that your user in such as to create a living word—to make a living word a fancy word, but when you have not got a living word there is no such onus. It seems to me, I submit to your Lordships that where you get a word which has no meaning at the date, then the dicta of Van Duzer's case do not apply to that at all. They were thinking of the essentials of user to create fanciness, and not the question of what I might call congenital fanciness.

Lord Justice VAUGHAN WILLIAMS : If you adapt a word-germ you are getting very near to a living word.

Mr. MOULTON : It is really a practical question. This is a question of fact, in which you have to decide, bearing in mind all the purposes and objects of the Trade Marks Act, whether ~~there~~ this is a word which is not a word, which at that date would not have a meaning, which is properly registered. I venture to think that when you are considering whether it is a fancy word, the fact that it had not a meaning at that date is a little more than saying it was new—the fact that it had not a meaning at that date is very strong evidence to prove that it was a fancy word.

Lord Justice COZENS-HARDY : Your argument involves that Mr. Justice North's decision in the case of Triticumina was wrong, does it not ?

Mr. MOULTON : I have no doubt Triticumina would have been supported after the remarks on the Solio case. Somatose is now on the register.

Lord Justice COZENS-HARDY : I suppose you say the same of Emollio ?

Mr. MOULTON : I should think Emollio would, certainly.

Lord Justice VAUGHAN WILLIAMS : What was it ?

Mr. LEVETT : A soap.

Mr. MOULTON : I am bound to say that where a word is a word with no meaning—I will not say a new word, because that may be questioned—it does not seem to me to matter much what it is applied to ; but where a word is a word with a meaning, and you have ~~got~~ to get your fanciness from user, then it does matter—it is all-important. But if it is a word which a Jury would say has no meaning, upon my word I cannot see why we should, and I cannot see that the Act says that we should, object to its use for anything or everything.

Lord Justice VAUGHAN WILLIAMS : Am I right—you will know, probably ; but chloryl ~~l~~ al was a shop-word originally, and not a science-word, was it not ?

Mr. MOULTON : I should say so. Chlorodyne is an excellent instance ; and chlorodyne was.

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Lord Justice VAUGHAN WILLIAMS : Chlorodyne is formed from a word which was well known as a root, at all events.

Mr. MOULTON : Certainly, my Lord.

Lord Justice VAUGHAN WILLIAMS : A root or a germ.

Mr. MOULTON : Yes, my Lord. A

Lord Justice COZENS-HARDY : That was established as a good mark under Common Law, was it not, before the Statute ?

Mr. WALTER : Chlorodyne is not a registered word.

Mr. MOULTON : It would have been.

Lord Justice COZENS-HARDY : I am right, and I am wrong. B

Mr. MOULTON : As far as we are concerned your Lordship is right.

Lord Justice COZENS-HARDY : That is what I meant.

Mr. MOULTON : So far as the word is concerned, so far as the essentials of a proper trade mark are concerned, it would have been supported. I cannot remember but I have no doubt Lord Justice Stirling C remembers exactly what it was that displaced the right to register it.

Lord Justice STIRLING : Laches. The two rivals advertised side by side in the " Lancet " for years, and then the bill was filed, and the Vice-Chancellor held there was laches.

Mr. MOULTON : He held that but for the laches it would have D been proper, and would have been supported.

(Adjourned for a short time.)

Mr. MOULTON : My Lord, I was coming to what I submit is the real issue— what is the status of tabloid in 1884. Following the view of the Court in " Bovril," you have ~~got~~ to look upon it as a question of fact. E Would tabloid be a fancy word in 1884 ? The test of that is, I think, would it have carried to the ordinary person a meaning. I think that that is substantially—I do not say it would be exactly intellectually equivalent —but that is substantially what the Court has got to consider.

Lord Justice COZENS-HARDY : You must couple or with that, I F think, the evidence of the mode in which you used it at ~~and~~ about the time.

Mr. MOULTON : We did not use it till after.

Lord Justice COZENS-HARDY : I say at or about the time. If you used it immediately after registration as a descriptive word it would G be evidence. What is suggested is that you immediately after the registration sold things as tabloids of this, and tabloids of that.

Mr. MOULTON : May I deal with that by itself at once ?

Lord Justice COZENS-HARDY : Not if it is not convenient.

Mr. MOULTON : My Lord, it appears to me that if that meant " my H tabloids " of so and so, there was nothing that could hurt us in that use. Now may I just take a word ? If I take up any paper almost I see on a large portion of some one page " Bishop's Varalettes." Now I have not the slightest idea what " Varalettes " may mean, but it is obvious that that is used in this way. It is obvious, in the first place, that that is a I trade mark ; as far as I can see it looks like a fancy word not

in common use, and it is obviously also the name of an article—varalettes. But supposing he had registered it as a trade mark, how could the fact that he used it to represent particular goods made by him—of course not, if he used it as descriptive of the thing and
A apart from its origin, then I could understand—but if he used it for a thing made by him, I cannot see that a trade mark owner ought to be afraid of doing that. I do not see that that is being disloyal, if I may say so, to the idea of a trade mark; and, therefore, when we say "tabloids of" so and so, we mean our issue of that medicine. I will go further. I will
B say our issue of this type of that medicine, but it is always our issue. We never said, "Among all tabloids ours ~~is~~ are the best"; that would be using it as descriptive of a thing independently of origin. But where they say "tabloids of antpyrin" it always means their issue, and I will tell your Lordship in the evidence that there was never a shadow either
C in the trade or by our own user—there was no evidence whatever of "tabloid" being used in that way—that people perpetually said tabloids of morphine, tabloids of so-and-so. As far as ourselves and the trade were concerned everybody knew it as Burroughs & Wellcome's issue in this form of that medicine. Now, am I not justified in saying that there is
D nothing which ought to hurt the owner of a trade mark that he used it in in the fact that way not as descriptive of the thing independent of origin, but as descriptive of a thing carrying with it origin. I feel that my Lord has put a point which is very fundamental here. There seems to be an idea that if you use it as descriptive of your goods but of particular goods, that
E is descriptive in some unlawful sense when applied to a trade mark. I say to use it as descriptive apart from origin would be unlawful; but when under it there is the idea of this special origin I cannot feel that that ought to militate in any way against the rights of Burroughs & Wellcome, because, after all, if when they used that they were thinking of goods to which that
F could be properly applied, why should they be afraid of it? There is no reason why an honest trader who has got a good mark should not apply it in that way. Just suppose it was "Baralettes" or any other word which is unquestionably a registrable word, and a man said "Baralettes of Cocaine, Baralettes of so and so," he would be using it as descriptive of
G his goods of that type containing that medicine. Would your Lordship say: "Oh, but this is evidence that this was a descriptive word"? It may be descriptive, he may use it descriptively, if in the description there is still present predominantly the idea it comes from.——

Lord Justice VAUGHAN WILLIAMS: I follow you. I think it is
H a troublesome point for you. I agree with Lord Justice Cozens-Hardy it is one of the best points they have made. Now I will take the case of lozenges. We will suppose a chemist—a particular person who registered a trade mark—was a dealer in sweet goods. He could not do now what I am going to suggest, but there was a time when he could have
I done it—that is to say, there was a time when the word "Jujube" was only understood to mean a gum from a particular tree which was made and called "Jujube." Suppose somebody or other began to apply that word to some compounds of sugar, and other things, lozenges made of

Mar. 28 1904 sweet compounds of sugar, and so on. You see that there was nothing to prevent a man who dealt in such goods taking the name "Jujube."

Mr. MOULTON: Supposing it was so?

Lord Justice VAUGHAN WILLIAMS: And you say that if you prove that otherwise he had a right to take "Jujube," that his right was not negatived if when he came to sell his things he said "Jujubes of Vanilla," or Jujubes of this that or the other. I do not say it is right, but I understand you to say that is the way you put it.

Mr. MOULTON: That is the way I put it, my Lord. I will take the word "Bovril," which ~~is decided as being~~ registrable as a fancy word. Supposing it was found after it was registered, not before, they advertised Bovril of Shinbone, Bovril of Ribs, Bovril of Chine, it being a fancy word which they are entitled to use and ~~that~~ simply meant a particular class of goods to which they were entitled to apply the word "Bovril," but a particular sub-species, if I might use the word, and the goods to which they generally had applied it, it could not, if it was a proper word, retroact to show it was an improper one because they divided it into sub-species like that. I am assuming for my point a word that is a fancy word. Then I say that that is not an illegitimate use. My Lords, really I feel that people who try to defend a trade mark are too much looked upon as belonging to the criminal classes, and it is not necessarily so. I think that with trade marks as distinguishing articles the better they are known the better for the public, because they do enable the public to get unquestionably the goods of a particular firm, and if that particular firm behaves itself well, it gets an extremely valuable property. Therefore I do not think, my Lord, we ought to say that a man who has got a trade mark, and who uses it in a way which is perfectly honest and perfectly unobjectionable, damages his right to his trade mark. I am assuming that apart from this subsequent user it is a word rightly on. Why should not a man who intends to limit his use of that word to that class of articles made by him, by epithets limit his use to articles made by him of a particular type--Bovril of Chine, Chine Bovril, Shin Bovril. I do not see that you have a right to say, "But look here; look at your own user. You use it as descriptive of an article." "But it was an article made by me; I am not false to my loyalty to the trade mark as a mark of origin because I put to that mark of origin something which describes more than the origin. I daresay your Lordships have had to do with Sheffield trade marks. I have known firms have applied one trade mark to goods of a particular quality, and another trade mark to goods of another quality, and you knew by the trade mark not only that it was goods coming from them but that it was a certain class of goods coming from them. But I have never heard that that limitation to a special class of goods was anything that was not perfectly within the rights of ~~a~~ person who uses a trade mark. I do not think it could be said that it was. Then supposing he goes on, and says: "My best Eagle." It does not seem to me that you have a right to say: "Look here, you talk of your Eagle, with epithets describing it"; or I will say: "My Swedish Eagle"; that is to

say : " My Eagle brand made from Swedish iron." You are not using it as descriptive of anything but goods which are yours. It appears to me, if I might sum it up, the test of legitimate user is that the indication of origin should not be absent. If the indication of origin is present, a man need not in the least trouble himself as to whether he uses it descriptively or not descriptively as long as he uses it loyally only to show origin.

Lord Justice COZENS-HARDY : I am afraid I have not made myself quite clear. I did not intend to suggest that you had lost or might lose a mark, which was originally good, by subsequent user. That was not at all in my mind. The point to which I was asking you to address yourself was this : " Whether what you did at or immediately after the time of the registration of the mark does not throw a light upon what was the meaning of the mark as originally registered.

Mr. MOULTON : My Lord, I did not misunderstand your Lordship, but I am going to try to show what I said answered it, although I quite understand your Lordships calling me up to say what was exactly the point. Suppose I take a meaningless word. Supposing it was " pothec," just creating a word, that I chose to call these tabloids, and I was immediately afterwards to say "pothecs of morphia," "pothecs of" so and so, I should be using it then as descriptively as "tabloids of morphia," "tabloids of strychnine," and you would have no right to say that pothec by itself had a meaning because I did it. It was a proper trade mark which I had registered, I meant to apply it only to my compressed tabloids, but as soon as I had made up my mind as to that point I might fairly say "pothecs of" so and so, "pothecs" of something else, and nobody could say that spoilt its being a trade mark. Now I come to the " tabloids " which Burroughs & Wellcome actually took for the purpose that I am saying they might take the word " pothec." If it does not re-act on " pothec," it ought not to re-act on " tabloid." It was a proper user, it contained no admission of what they claimed to have been improperly put on. I say its user did not carry an admission in one case more than the other. Now have I made my argument clear to your Lordship ? I cannot think that any legitimate user which a man might fairly make of a trade mark once got can be used against him to show that he did not get it.

Lord Justice VAUGHAN WILLIAMS : I could think of an example which would test it. It is so difficult—one always finds oneself gravitating somehow towards an illustration which is merely *idem per idem*. There is a half English half Scandinavian word which one is very familiar with now—blooms. Blooms are lumps of pig iron which have passed once through the furnace.

Mr. MOULTON : Yes.

Lord Justice VAUGHAN WILLIAMS : Originally I believe it was only applied to Swedish goods, being a Swedish word, I believe. I do not know Swedish, but I understand it is a Swedish word. I suppose—at least I have assumed for what I am going to say—that it is possible that at one time "blooms", or "blumen," if that is the Scandinavian form of the plural, might have been adopted as a trade mark.

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Mr. MOULTON : Yes.

Lord Justice VAUGHAN WILLIAMS : Then these iron producers, I suppose, without losing their trade mark might have said in their catalogue of goods on hand from their places, "blooms of Silesian iron," "blooms for export." I do not know whether they produce iron for export. A

Mr. MOULTON : The Americans do at all events, my Lord.

Lord Justice VAUGHAN WILLIAMS : "Blooms for the United States." The other things being right, would their user in their catalogue of the word "bloom," in cataloguing these various sorts of rough iron blocks that they dealt in, prevent its being a good trade mark? It is B rather like being descriptive.

Mr. MOULTON : But, my Lord, it may be descriptive inside of your goods. For instance, if I have B.K.B., and B.K.B.B. for the next better quality, and B.K.B.B.B. (supposing they are all good trade marks) for another better quality, and if I use them for those qualities, the trade C mark is descriptive within my goods. With all due respect there is no objection, if I have a proper trade mark, ~~if~~ using it descriptively within my goods.

Lord Justice VAUGHAN WILLIAMS : Of course in beer you get X.X.X. (treble X); but there are some brewers who do not use X at all. D They duplicate other letters. I forget the name, but they are some brewers at Maidstone.

Mr. MOULTON : They duplicate other letters. Those are perfectly capable of being registered as a trade mark. It all comes back to what I say, that using it as descriptive of special goods of your own is no E disloyalty to a trade mark. Using it as descriptive of goods independently of their origin puts you out of Court; but I cannot see why using it as descriptive within the genus of origin is a thing to be avoided. Why should they avoid it? It does not deceive the public. It helps the public, and helps the public very much. F

Lord Justice VAUGHAN WILLIAMS : I forget the letter used by ~~those~~ these particular brewers, so I will not give them an advertisement. But you say that if you took as your trade mark "Q.Q.Q." instead of "X.X.X.," the fact of you in your list describing your beers as treble Q and single Q and double Q would not be fatal to you? G

Mr. MOULTON : Not at all; and I go further: Supposing I say, "Q.Q.Q. all malt," if treble Q was my trade mark it would only mean goods that I applied treble Q to, which are all malt. What is there that is disloyal or objectionable? What is there that hurts the public? I will come back to my word. What is there disloyal to a trade mark in H using it with other things to be descriptive, provided it is only descriptive of my goods? My Lords, really in this case, as in the Kodak case, it appears to me that the whole argument against Messrs. Burroughs, Wellcome & Co substantially rests upon some idea that a man may not make by his user his trade mark descriptive, not I of all, but only of a special portion of his goods, or that he may not use it in combination so as to make it descriptive. By "descriptive" I mean the distinctive name by which a person knows not only that it comes from

A, but that it is a particular thing that comes from A. I cannot understand why a man should not use a trade mark so that it means a particular thing that comes from A. Supposing a man had registered "Demon" for lawn tennis bats, and he only applied it to the
A shape, which is the well-known shape with the knob at the end—the Demon racket—supposing he only applied it to them, and then he put "Double stringed Demon." "Demon" would get to be the name by which the public knew a bat of that shape coming from him. Other people could not use the word "Demon" for a bat of that shape. Then,
B supposing he put "Double stringed Demon" it would be a "Demon" which had an additional peculiarity, but being a Demon it would be a thing that came from him. Now let me take this very example here: He says, having registered "tabloids," "tabloids" have a distinctive meaning. Why not? "Tabloids" show
C they are my goods, and by my user they are my goods only—I only use it for compressed medicine; my goods in the shape of compressed lozenges, bi-convex, something or other—it is my goods of that shape containing strychnine. Has there been any user there that ought to reflect on the propriety of the registration? Suppose I take the word "varalette," or
D suppose you take any word to mean medicines made by him of this type. He would have said "varalettes of strychnine" if he meant it. It would mean things coming from him containing strychnine to which he applied this trade mark "varalette," so that if you saw the word "varalette" you knew it came from ~~them~~ him.
E Your Lordships would not then have said "varalettes of strychnine" meant that "varalette" was descriptive in any sense that would militate against the propriety of the registration.

Lord Justice COZENS-HARDY: We have had from the other side a very compressed argument and a very clear argument, but we have not
F heard, and I do not wish in the least to hear any great bulk of the evidence, but I wish to ask this question: No doubt you do not lose a trade mark merely because you do not label it as a trade mark, but how soon did you on your labels put a trade mark? I have the impression we were told it was a year or two afterwards. Mr. Neville will be able to
G find out perhaps.

Mr. MOULTON: I think it was in the 1887 price list that we put "tabloid."

Lord Justice COZENS-HARDY: Two or three years afterwards.

Mr. MOULTON: Yes, but long before anybody else used it.

H Lord Justice COZENS-HARDY: Yes, I know that.

Mr. MOULTON: But my learned friend, Mr. Nelville, is much better up in the evidence.

Lord Justice COZENS-HARDY: Then he will deal with it.

Mr. MOULTON: Yes, my Lord, he will ~~do it~~ deal with it. He conducted the
I case in the Court below. I submit what was a perfectly lawful and quite natural user of a trade name properly registered, which they intended to apply to one type of their goods only, should not reflect back because there really is nothing which would deceive the public; nothing which would in any way point to the trade mark being intelligible apart from

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its user by us and its registration by us—I just want to go, therefore, back to the question of the actual registration of the word—the word "tabloid" itself. It is suggested that once registered the subsequent user is as appropriate to a properly registered word absolutely without meaning as to one which would have a meaning, and therefore no hostile conclusion should be drawn from it.

Now, my Lords, there is a passage in the Judgment which shows Mr. Justice Byrne's view of the argument with regard to the word "tabloid" which I want to cite before I deal with the word itself. Your Lordships will find the reference on page 454. It is not in the part which was read by my learned friend, Mr. Walter, but it comes a little later. It is just after the letter G on page 454: "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. A large number have been produced, not one of which uses the word in reference to the goods of anyone except the Plaintiffs, and all of which refer to the Plaintiffs' goods in connection with the words 'tabloid' or 'tabloids.'" His view is this, and I must submit that it is a very good view, that this was a gift to the language, reserving the special use to themselves. At the moment when it was invented it was registered before any user at all. We have, therefore, to consider whether or not this was, when so registered, properly a fancy word.

Now, my Lords, I will go to the word itself, because I do not see any reason why one should shrink from examining the word as closely as possible. I feel, however, that I am entitled to press your Lordships in this way. This trade of my clients has grown to an enormous extent legitimately on account of the way in which it has been carried on, and there is no question, in fact the evidence proves it, that their medicines are known all over the civilised world, and are in short known very widely indeed by the public. Of course we have all heard the word "tabloid" since 1884 repeatedly. Now to treat my clients fairly one has to be on one's guard against the unconscious intellectual bias produced by familiarity. T-a-b-l-o-i-d would have been utterly unfamiliar to anybody before 1884. Now it is familiar to the eye and to the ear to such an extent that it is difficult to carry one's mind back to when it would have been unfamiliar. Now, my Lords, I am entitled to ask that your Lordships should not only do that, but I think I am entitled, under the Vaseline case, to ask for something more, and that is that if there is any doubt at all, that the benefit of the doubt should be given to the possessors of the trade mark, which trade mark has now been on the register for 20 years, and so effectivelly used since then that the whole trade observe it, and recognise it, as a good trade mark. Your Lordships

know we do not trade directly with the public, we only deal with the trade, and it was admitted that so far as the trade was concerned this word had one, and only one meaning. That was an admitted fact in the case. So that I say that you have got to carry your mind back to a time when the word looked wholly unfamiliar to you, and you would wonder what it meant, and I am entitled to the sympathy of the Court if there is any difficulty because it is my success that has made the word sound so familiar now.

Now I ask what would a person have thought was the meaning of the word t-a-b-l-o-i-d? My learned friend says it comes from "table." Well all I can say is this: I have tried but I do not know of a single word in the English language in which there is the ending "o-i-d" applied to a native English word if I might say so. They are all words of the learned type where it has been added to a word distinctly Greek, or Latin, and with very very rare exceptions Greek words. For instance, we have as an illustration of that rhombus—rhomboid; the very spelling of the word shows where it comes from. Let me take another example: I will take the word "Oxoid." Can anybody say that the word "Oxoid" is not a fancy word?

My Lords, I very much doubt whether in 1884 "oxoid" and "tabloid," or "tabeloid," whichever you like to call it, one of those words would seem stranger than the other. I confess they seem to be exactly upon a par. There are such words abundantly, no doubt, as "dermatoid" in anatomy. You have a lot of words of that type.

Lord Justice VAUGHAN WILLIAMS: What does "dermatoid" mean? How do you apply the term? I do not feel quite sure. Is it to the skin? Is it a false skin, or what is it?

Mr. MOULTON: Well, my Lord, I am rather out of my depths here, perhaps, but your Lordship may remember that there is a certain type of tumour. I am not sure, but I think I am right, there is a certain type of tumour which comes from involutions of the skin, and which comes from in-growing hairs.

Lord Justice VAUGHAN WILLIAMS: Yes, you are right. I have it here "Dermatoid, a form of skin, skin-like."

Mr. MOULTON: Yes, my Lord, there are a great number of those words; for instance, take "Chairoid," if I heard that for the first time I should not have a notion whether "Chairoid" was a kind of footstool, or whether it was a form of chair stuffing. It would be something that the man wanted to connect with a chair, but really it would have no meaning, it would be a purely fancy word.

Lord Justice VAUGHAN WILLIAMS: Or "roaroid"—a sort of roar.

Mr. MOULTON: Yes, my Lord, and as to the scorn of my learned friend, Mr. Gray, who said if the word tabloid meant anything it meant something like a table and was rather a fancy word for something like a pill; and, therefore, he said, it is the same as tablet—"tab"—l-o-i-d. Well, my Lords, at the very same time they registered "valoid." is that a diminutive of "valet"? Really these arguments, when you know what

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you have to argue up to in the way of a meaning, appear to have a force, but put yourself back in the state——

Lord Justice COZENS-HARDY : Did they register "Valoid"?

Mr. MOULTON : It was registered at the same time by Messrs. Burroughs, Wellcome & Co.

Lord Justice VAUGHAN WILLIAMS : In which class?

Mr. MOULTON : The same class.

Lord Justice COZENS-HARDY : With reference to the same goods?

Mr. MOULTON : "Chemical substances" is not used in Class 1; used in medicine and pharmacy.

Lord Justice VAUGHAN WILLIAMS : Might I see that? I am rather interested. (Document handed.)

Mr. MOULTON : If I might respectfully say so, I think that Mr. Wellcome's evidence : "I wanted a euphonious word, easily remembered," and he took "Valoid" for one set of things—one of the largest parts of his trade.

Lord Justice COZENS-HARDY : Is "Valoid" now used?

Mr. NEVILLE : Yes. It has been used ever since.

Mr. GRAY : I do not think your Lordships will find that word "valoid" in the dictionaries.

Mr. MOULTON : The reason is that "tabloid" has had so much wider a success and a so much wider user.

Lord Justice VAUGHAN WILLIAMS : Lord Justice Cozens-Hardy has called my attention to the index to this book of Mr. Frank Foster's, which is a sort of encyclopædic book. There appears the word "papoid," and then he refers to page 60 in the second volume, and there you find papaw, papain, papaiva, papayotin, which are all, I suppose, really foreign words, or papoid. It is a ferment prepared from the juice of the paper tree of South America and the West Indies.

Mr. MOULTON : Suppose you take that as a trade mark, could you have a better one?

Lord Justice VAUGHAN WILLIAMS : It is supposed to be a great medicine to use for gastric catarrh, and that sort of malady, and apparently it is a very powerful medicine, and you use it in a compressed form; and from the description of it here I should think it would be safer to take it as a valoid than as a tabloid, because I should think you would want to have a very definite and weighed amount, from the description, if you wish to survive the dose.

Mr. MOULTON : Let me take that word "papoid." It is obviously connected, I presume, with "papavor" or something of that kind; but p-a-p-oi-d, which is the way in which you would spell it, I am perfectly satisfied any Jury would say : "I have never heard that word. I do not see what that word means, it might mean anything." It might mean a new form of curry, and it might mean medicine of almost any kind. The mere fact that you can see how the man got at it when you know that he is going to apply it only to one thing I confess never seems to me to be the proper clue. I do not see why it is less fancy because you know what created the fancy. No man would say that a dream on a

Christmas night is less fanciful because you know it comes from the pudding. It is too ridiculous. The way in which you get at it is no indication, provided the result is a fancy.

I remember in the argument about "Solio' it was said: Oh, any one
A can see "sol" is the sun-photographic paper. I went up to the House of Lords with two decisions against me, because of the previous cases. I must say that I think I went up with the benevolent wishes of the Court of Appeal—they felt that the previous cases should be reviewed by the House of Lords, but the House of Lords said: Take "Solio." What would
B "Solio" mean? Give us the meaning it would have to your twelve jurymen hearing it then. And t-a-b-l-o-i-d; something like a tab or table, or something of that kind, which does that mean? My learned friend talks about tablet as if that was in my way. I I take 'tablet,' if he was right in saying it applied to these goods, then
C keep your name 'tablet.' I want to have something which will mark goods from me, I want a word which I am satisfied no person would understand at that time in order to mean my compressed goods. You say: Oh, but then it must have been suggested by your thinking of table, or tablet, or tabellae, or tabulae, or something or the other. It may have
D been suggested, but what would t-a-b-l-o-i-d have been supposed to be? Look at it in the form in which it is as applied to chemical substances—because my Lords I think I am entitled to say that you have got to look at the registration. I ask to register it with regard to chemical substances used in medicine. I ask to register the
E word t-a-b-l-o-i-d, and I feel perfectly satisfied if you had put it to the Jury—"Is that a fancy word not in common use?" I cannot help feeling that they must have said at that date: Yes, it is a fancy word, we do not know what it means.

Then, my Lord, the whole of the rest has been worked out by my
F clients' success. Of course, whenever you have a word which is very successful, it rings so familiarly in the ears of persons. Take 'Bovril.' 'Bovril' was the name of a thing by the time when I had to argue the case and it came from "ox"—"bov." It sounded almost a desperate case, and the Court said: "Would not 'Bovril' be supposed to mean something to
G do with beef? Yes, I quite agree. But what to do with beef? And then because it would have no meaning they considered that the registration was a good one. 'Tabloid,' it is said, has something to do with a table. What is it? A tabloid might be anything, it might have been a digestive medicine, to be taken at table for anything I knew—it might
H have been anything of that kind. It is a strange ending to add on to such a word as "table"—an ending which destroys its meaning, because it is not a table: it is something which has been suggested possibly by the word table, and that is all. I cannot say that the English people were one atom the poorer by that any more than by the word "oxoid" or
I "sheepoid," or "papoid." It was not a word which would normally grow up. It was a word which was the product of the fancy of Mr. Wellcome. There was no reason to think that it would have grown up—words of that kind up to that time had not grown up so. I quite agree, if I might

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respectfully say so, with what the President of the Court said with reference to its being somewhat different now with the enormous success of the word "tabloid," which has been so wide. That may be so, but certainly at that date you cannot find one word which has a birth of that kind—an English word with the word "oid" put to it, that English word being a word meaningless in medicine—quite meaningless. "Table" is never used in connection with medicine in any way at all, and, indeed, if it was something like a table, it would be, in medicine, a perfectly meaningless word. It is by trying to say that this is the same as a tabletoid, or something of that kind, that they get any approach to meaning, but I cannot help thinking that it would have had no meaning at all at that time.

I should just like, in this direct connection, to call your Lordships' attention to a small portion of the Bovril decision on page 605, 1896, Vol. II., Chancery. Lord Justice Lindley is applying himself to the decision, and he says, just about a third down the page: "We have got to ask ourselves this: Was the word 'Bovril' on November 2, 1886, a distinctive fancy word not in common use? Now, pausing there, and not referring to the decisions for the moment, can anybody say, with truth, that 'Bovril' was not then a fancy word not in common use? I confess my powers are unequal to the task—I cannot do it. It is admitted that the word was new. It is admitted that it was one that was never heard of before. If such a word as that is not to be deemed a fancy word, it is very difficult to say what is. Then Mr. Bower says: 'Well, that might be, if this were a decision in 1886 or 1887; but the Appeal Court has said what is meant by a fancy word, and it has said that nothing can be a fancy word which is not obviously non-descriptive. He says that 'Bovril' is not obviously non-descriptive. He says that on the contrary it describes 'ox' and it means 'ox.' Let up look at that a little carefully. In the first place, let us look at what this Court has said on the subject. In Van Duzer's Case and Leaf's Case (1), cases in which a coined word was not under consideration at all, but ordinary English words were under consideration, the Court said, that a common word will not do. You have got a fanciful use of a known word. You must have a word which is obviously non-descriptive."

Then he deals with the "Somatose case," which I think has now been set aside. He says "The decision of the "Somatose case" I accept with all loyalty, although I did not agree with it. It is to the effect that 'Somatose' was not an invented word, and was not non-descriptive within that section. We did not differ about anything more than this. I thought it was an invented word, and the other members of the Court thought it was not. I thought it was not descriptive; they thought it was." Mr. Justice Lindley, whose decision, I think, has been supported, and at all events is consonant with the subsequent decisions on the same Act of the House of Lords, said that "Somatose" was not descriptive. Now if you take "Somatose" as non-descriptive, it appears that "tabloid" must be non-descriptive. He could not have said that "*ose*" was not just as common a termination as "*oid*," for there are just as many learned words ending in "*ose*"

as in "*oid*," most of them being medical words. You have any number of them ending in "*ose*," but they have all left my mind for the moment.

Lord Justice VAUGHAN WILLIAMS : There is "somatose."

Mr. MOULTON : Yes ; and that also is descriptive. Then there is "necrose" used when a bone decays. There are a great number of words of that kind which I could string off to your Lordships, except when I want to do so, and then they all appear to go. I can show your Lordships a vast number—"Somatose" was, of course, a fresh thing, but he said, No, it is not descriptive, because a man does not know what it is. When you make a word to mean one thing, "tabloid," then it might mean a thousand things when from its form you cannot tell what it means. And then, my Lord, I think that Lord Justice Lindley would, on that decision, have said it was non-descriptive.

Lord Justice VAUGHAN WILLIAMS : You do not often find it necessary, Mr. Moulton, to fall back on the dictionary. I find here "ose —a suffix originating in the end of the word 'glucose,' and employed in forming the names of the related carbo-hydrates, such as saccharose, and cellulose, with the isomers of these, such as dextrose, taevulose, manitose, maltose"——

Mr. MOULTON : That was the nest I was trying to think of, my Lord.

Lord Justice VAUGHAN WILLIAMS : There is one word here that I see has both the terminations—"amylose" ; that has "amyloid" too, has it not, if I remember rightly ; I am sure it has.

Now what is amylose ?

Lord Justice COZENS-HARDY : I ask that.

Mr. MOULTON : What is amylose ? I have not the faintest idea, but I will tell your Lordship one thing I know, that it is connected with the amyl group, which is associated with potatoes. Amyl is one of the alcohols, and it is beyond the ethyls. You have first the ethyl alcohol, then the methyl. I know that amyl has something to do with that.

Lord Justice VAUGHAN WILLIAMS : It says here : "One of the three sub-divisions of the carbo-hydrates or compounds containing six or 12 atoms of carbon united with oxygen and hydrogen in the proportion to form water, the others being glucose and saccharose."

Mr. MOULTON : It is akin to that group. What body it is nobody knows. I believe a man started the belief that there was a group which he called cymaloids.

Lord Justice VAUGHAN WILLIAMS : Amyloids seem to be "any non-nitrogenous starchy food semi gelatinous." That is what is said in this dictionary, but it gives you the same Greek derivation "amulon plus oid." I do not know what it means, but that is the word.

Mr. MOULTON : He took the word "amyloid," and I do not know but that the body exists. But still nobody knew what that was, and it was a fancy word which he chose to invent. I really think "somatose" is a perfectly definite pharmaceutical product, and "somatose" is now registered, and it is a very digestible preparation of somo and meat which is administered to invalids. It is unquestionably connected with flesh and

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he called it "somatose." Nobody knew what "tabloid" meant; it was connected with "table" apparently. If it was connected with table I do not see how at all it was known what in fact it was to be applied to; but it seems to me to first apply that word must unquestionably be to invent a fancy word.

Lord Justice VAUGHAN WILLIAMS: I have been trying to find a word. Here is one for you: amylitic medicine—one that was supposed to operate otherwise than by physical properties. Now it has come to be used instead of powder, and sympathetic powder is one of the principal amylitics. If any chemist wants a name for his powders for that purpose he can take "amylose," I should think. I will not guarantee it.

Mr. MOULTON: I cannot help thinking, if he had chosen to take that before anybody ever used the word, whether you could not say "Oh, but he is thinking there of a certain substance"—I do not know whether you could or not, but I cannot help thinking that would be an example of a fancy word. My Lord, I do not want to ring the changes on this, but I submit to your Lordship at that date when it was unfamiliar nobody would know what, as applied to medicine, "tabloid" meant, and it was not taking away from the English language anything at all which was in it. It was a fancy word only, although you may now, knowing the class of goods to which it has been applied, say, "Oh, but that is the way ~~way~~ in which it came to be thought of. Therefore you must consider it as not a fancy word."

Now, my Lord, I have been thinking as I have been standing here of the word "Valoid." Supposing it had had the success of "Tabloid," what would they have said?—that that word obviously was connected with health. "It was a medicinal substance; it was intended to give health to people; then he called it 'valoid' from the Latin root which we see in 'Vale,' 'invalid,' and that sort of thing." Suppose it had such a tremendous success that "Valoid" was now as common as "tabloid," we should have had exactly the same argument. Everybody knows what "Valetudinarian" means; everybody knows what "invalid" means; everybody knows what "validity" means; they are all from the Latin word "health"; "Valoid" is that which is intended to give persons health. It is *ex post facto*.

Now, my Lord, I will not detain your Lordship with anything further, especially as my learned friend, Mr. Neville, is following me. I submit the one issue is whether that word was fairly a fancy word at that date, but there is nothing that arose subsequently which ought at all to affect my clients' right to maintain that the registration was good, and that the decision of the learned Judge in the Court below was correct, and should be affirmed by your Lordship.

Mr. NEVILLE: After what my learned friend has said I have only a few words to add to his argument. When we are told that in 1884 "tabloid" was descriptive, it is interesting to endeavour to ascertain what it was that "tabloid" described. Now, first of all, it is said that "oid" is a well known suffix to English words with a definite meaning. There, my Lord, I venture to join issue and say that in 1884, certainly that was very far from the truth. "Oid"

no doubt had been used in scientific language in a variety of cases to increase for scientific purposes the vocabulary, but I venture to suggest that as a common English suffix it was unknown. All the words that end in "oid" in the ordinary English tongue have not the "oid" as a suffix, but are like "avoid" and "devoid" where the "void" is the root word. I challenge my friend on the first point. I say you have given no evidence to show that "oid" was a common English suffix in 1884.

Lord Justice VAUGHAN WILLIAMS: Pausing for one second there, may I say, only for Mr. Moulton's consideration, I think your derivation of "Valoid" was wrong. I think, having regard to what we are told, it means in the dictionary that it was merely chemist's Latin from the prescription; it is "to weigh"; *valet*, it weighs. I looked it up in Mr. Joseph Ince's little Latin Gramma of Pharmacy, which is written for the young chemists, and ordinary chemists, and when he comes to this he says: "Valeo to be of the same value as neuter. Minima centum et decem valent pro granis fluidis centum, 110 minims equal 100 fluid grains."

Mr. MOULTON: My Lord, it was an attempt to find it out. It did not come from my client the least in the world. It was an attempt to find out what argument would be put against us.

Lord Justice VAUGHAN WILLIAMS: Yes, I only said when you did give that suggestion I daresay 10 years hence everybody would know that a "valoid" means a fixed quantity, a medicine sold in a packet. I did not know it till to-day, that is all I can say.

Mr. ~~MOULTON~~: My friend is wrong ~~again, as usual.~~

Mr. NEVILLE: Now, my Lord, supposing I am wrong in that proposition which I have ventured to submit to your Lordship about the termination "oid," then, again I say: Very well, granted "oid" is a well known English suffix, meaning: "of the nature of," or "like"—like what? Now my friend says: Well, like a table, or a tablet; and when he is asked if he will be good enough to say whether he means "table," or whether he means "tablet" (because your Lordship recollects in the English language "table" and "tablet" have a totally different signification), he says: Please yourself; he will not tell us whether he means "table" or "tablet." But he produces a number of dictionaries, and they all find the derivation in "table" and "oid," and they do not suggest "tablet."

Lord Justice COZENS-HARDY: You were for some few years after registration selling "tablets" and "tabloids."

Mr. NEVILLE: Yes.

Lord Justice COZENS-HARDY: And I notice in one of your catalogues ~~your~~ you have tablets or tabloids and compressed drugs. What is the difference between the two?

Lord Justice STIRLING: Both were registered trade marks.

Mr. NEVILLE: Both were registered trade marks at that time. We will be quite candid with your Lordships as to what took place. "Tablets" had been registered as a trade mark. The Respondents here had doubts as to being able to retain "tablets" as a registered trade mark, and therefore they substituted "tabloids," and they very soon afterwards adopted the word "tabloid" altogether, and have ever since stuck to it.

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Lord Justice VAUGHAN WILLIAMS: Being wholesale dealers, even when they changed "tablets" to "tabloids" they could not immediately drop it.

Mr. NEVILLE: No, my Lord, they could not drop it immediately; they had to do it gradually. If I might follow that question about the "table" and the "tablet" a little further, "tabloid" is said to be descriptive, because it is something like a "tab," and "tab" has a reference to either "table" or "tablet" and we may please ourselves as to which we choose. Now what is it in the article sold which is described by the first part of the word, "tab" or "tabl"? Has it something to do with a table, or has it something to do with a tablet, or has it something to do with something which is common to both? There is only one thing which I know of which is common to both "table" and "tablet," and that is flatness, and that is the only thing which our "tabloid" does not possess, because it is a bi-convex disc; and, therefore, if you find out how "tabloid" can be descriptive of the drug that is sold, you find that the only conceivable reference that is capable of being extracted from it, that is the idea of flatness, is absent from it.

Lord Justice VAUGHAN WILLIAMS: It is common ground that these are bi-convex discs, that these "tablets" or "tabloids," whatever was the governing word used at the time, are bi-convex. Is that so?

Mr. WALTER: Yes, my Lord; bi-convex in the sense of not being quite flat.

Mr. NEVILLE: Therefore, my Lord, it seems to me that the endeavour to extract a meaning from the word "tabloid," even if you take the article in question, necessarily fails. Of course, when you come to a case which is tried 20 years afterwards people have associated the word "tabloids" with the particular thing they have bought under that name, and consequently they endeavour to tell you what it is that is meant by "tabloid," and in what sense "tabloid" is descriptive."

Now, my Lord, I might refer your Lordship very shortly to what was said in a case before this Court, In the Matter of the Registered Trade Marks of Bass, Ratcliff & Gretton, Limited, which is reported in 19 Patent Cases, and it is only one passage in Lord Justice Romer's Judgment which I wish to refer to. All the learned Judges agreed in that case. There was Lord Justice Vaughan Williams presiding, Lord Justice Romer, and Lord Justice Mathew. It was not the best known mark of Bass's, it was the diamond mark of Bass's, which is used upon certain classes of beer. Lord Justice Romer says this: "The mark in question is a very well known mark, and it is remarkable for its simplicity. We all know that it has been used for a great many years, as appears from the evidence, and has not been challenged. Messrs. Bass & Co. have been registered as the owners of it for over 26 years, and, as far as I am aware, it has not been attacked until the present application was made. I think it might fairly be said that after such a long uninterrupted user, and after the trade mark has been for so long a time registered without attack, every reasonable intendment ought to be made by the Court in support of the registration."

Lord Justice COZENS-HARDY: Where is the Vaseline case?

Mr. SEBASTIAN: It is 1902, 2 Chancery, my Lord.

Lord Justice COZENS-HARDY : I think there are some very similar observations in that case.

Mr. NEVILLE : Yes, there are, my Lord, as to the propriety of intending everything in favour of long user in the case of a registered trade mark. Here we have not 26 years, but we have 20 years, in which the mark has been absolutely unassailed, and we have the evidence of the Defendants' witnesses themselves—I do not refer to my own—and they say that no honest chemist would think, in answer to an order for tabloids, of giving anything but Burroughs, Wellcome & Co.'s goods. That was the evidence given by their own witnesses. Then there was an attempt to make out a case that with regard to the public the word had a different meaning, and the witnesses were asked as to what the meaning of "tabloid" was in the minds of the public. They all admitted they knew themselves it meant Burroughs and Wellcome's goods and nothing else. When they came to try and tell us what it was they thought the public meant, they could not give any intelligible meaning to it at all, and they all of them differed. My Lord, if I may give some of their expressions, there was one, a chemist, Mr. Young, of Warrington, who said that the public used "tabloid," "tablet," and "cachet," indiscriminately. He said they did not mean "tabloid," but "tablet," which was rather suggestive, I think, as an explanation. Then the next witness said that the public describes form only, whether compressed or not ; nothing to do with compression, and whatever the shape, square, round, or oval, the public apply the word "tabloid" to any small solid drug except a pill. Then the next was a Dr. Hayward of Liverpool, and he said what they meant was any dose in a convenient form for swallowing. Your Lordship understands these are all the Appellant's witnesses, not mine. The next witness, Dr. Watson of Liverpool, says that "tabloid" is medicine put up in a compact compressed form, and in the shape of or resembling a table ; and Dr. Reid of Liverpool said it is a drug of a certain form and size.

Lord Justice VAUGHAN WILLIAMS : You are telling us what these witnesses said. This is not against you, I think, but if I was the maker of pills, perfectly round spheres, and I choose to take as my trade mark "octagon" I suppose I could.

Mr. NEVILLE : I do not know of anything to prevent you.

Lord Justice VAUGHAN WILLIAMS : Nobody could say that "octagon" was descriptive of my round goods.

Mr. NEVILLE : The only reason I referred to this was that after all it is a question of what we sometimes call "the man in the street" thinks a word of this kind means—whether he attributes to it a descriptive meaning or not. If he did not attribute a descriptive meaning to it in 1904 or 1903, it is perfectly certain, I think, that people did not attribute a descriptive meaning to it in 1884, because in the meantime he had the benefit of knowing the use of the word "tabloid" in connection with a particular form of drug. There is just one little piece of evidence I should like to refer to, because I think it shows what the general notion or the idea is. One of the witnesses exhibited a circular which his firm issued. They were manufacturing chemists, and they had in

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modern fashion offered certain prizes for answers to questions, and they gave particulars of the prize scheme, and various problems were set, and the last one is this: "Suggestion for a coined name capable of registration—the words 'tabloid,' 'varalette,' 'lentiform,' and 'pearloid,' are good examples." I venture to think that is a very good instance of what the people concerned really thought about it, even after the long use by the Plaintiffs of "tabloid." A

Lord Justice VAUGHAN WILLIAMS: Can you tell me what "pearloid" is? I daresay Mr. Walter can tell me.

Mr. WALTER: I never heard of it until this moment, my Lord. B

Mr. NEVILLE: With regard to the witnesses called by the present Respondents, with the exception of three witnesses out of a very large number, which my learned friend referred to, who admitted that, in their opinion, "table" was the derivation of the coined word; they were persons who would know if anybody would know. Take Sir Francis Laking as one instance. He said: "It is a word coined by the Respondents; it is a hybrid term, and does not mean very much of anything. I never heard of it before the Respondents used it." All the doctors said the same. They all said that the derivation of it must have been "tablet," but they one and all said apart from the Plaintiffs' case it had no meaning to them at all, so I submit the whole of the evidence is immensely in favour of our contention that in 1884 this word did not bear a descriptive meaning at all, even supposing that you present at the same time the name of the goods to which it was going to be applied. C D

One word about what Lord Justice Cozens-Hardy put to my learned friend, Mr. Moulton, about the use of "tabloids of chlorate of potash," and expressions of that kind. If "tabloid" was a fancy word not in common use in 1884 it would not make it any less so if it had been improperly used after that date; but is that an improper use? I venture to think not, because what does trade mark mean? What can you read into a trade mark? The manufacture of the owner of the trade mark. If you write it out in full "Burroughs & Wellcome's trade mark" means "goods of the manufacture of Burroughs & Welcome." That is how you put it in full It is a short method of reference to origin. If that is so, supposing instead of saying "tabloid of chlorate of potash" you say "Burroughs & Wellcome's manufacture of chlorate of potash" you get precisely the same meaning. Therefore, I think you may see that tabloid may well be used in the sense of the manufacturer whose mark it is. E F G

Lord Justice VAUGHAN WILLIAMS: I do not think Mr. Walter will say anything to the contrary, but he starts earlier, and he says: "Tabloid" means "a particular shaped piece of." Of course if you start with that you say it means the manufacture of Burroughs & Wellcome, or whatever it may be. If you once say that, he does not differ from you; but he says this particular word "tabloid" means a piece of compressed drugs the shape of, as you say, either "tabloid" or "tablet." H I

Mr. NEVILLE: Of course if that is so then, if my learned friend is right, my present argument is useless.

Lord Justice VAUGHAN WILLIAMS: Quite.

Mr. NEVILLE : If my learned friend is wrong my present argument is unnecessary. Mar. 28, 1904

Lord Justice VAUGHAN WILLIAMS : I merely hint that. It deals with this argument, that it is only an argument against you if we adopt the construction which has already put you out of Court.

Mr. NEVILLE : I think that must be so. Then I will only say this in conclusion : No doubt in the earlier days, I will not say the section was construed, but the section was applied with extreme severity, and hardly any word produced as a fancy word withstood the scrutiny of the Court ; but I think it is quite impossible to say, after the Solio case, that the earlier decisions, which are now held to be decisions of fact, were favourably looked upon by the highest tribunal in the land. The "Somatose" case particularly was absolutely overruled, and if you take the principles laid down in the "Solio" case I think it comes to this, that what you have to see is that under cover of the registration of a trade mark the public is not robbed of the use of something which but for that registration it was properly enjoying. Can it be contended here that the public was in any way robbed of the enjoyment of any word which they were in the habit of using, or had used at all ? The evidence is perfectly clear that the word was entirely and completely new. "Tablet" which has been referred to was a word which had got into the dictionaries with applications to drugs. I should like to refer to what the only references were to "tablet" in 1884. It is rather important, because it shows what, to those persons who knew of the application of that word in the drug world, it really meant. The nearest edition we have to the time of the registration in 1884 is Ogilvie's Dictionary for 1883, which is immediately before, and there the definition of "tablet" is, so far as drugs are concerned—of course there are other meanings—"a solid kind of electuary or confection made of dry ingredients, usually with sugar, into little flat squares—called also 'lozenge' and 'troche.'" So far as "tablet" had any meaning in the medical world at all in 1884 when the registration took place, that was what it meant—any kind of solid dry medicine made up into little flat squares, and it was synonymous with lozenge and troche. That came from earlier dictionaries in 1870 and 1872 ; one is Johnson's dictionary for 1870 which gives it as "medicine in square form" ; and Chambers' dictionary for 1872, "Tablet, a confection in a flat square form." That was the only meaning in the language attributed to "tablet" at the time of the registration of "tabloid" in 1884, and I submit to your Lordships at this length of time it is not for me to justify my registration so much as for my learned friend to show that at the time of registration this was not "a distinctive fancy word not in common use."

Lord Justice VAUGHAN WILLIAMS : Before you begin I should like to ask you one question, Mr. Walter. This advertisement which was put in speaks of "tabloid, varalette lentiform." Do you know what "lentiform" means ? Does it mean in the form of a lentil bean ? You do not know ?

Mr. WALTER : A lens form I should have thought. I should have

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said it was about as bad a trade mark as could ever be thought of, but still——

Lord Justice VAUGHAN WILLIAMS : I am still anxious to know what it means.

Mr. WALTER : In the form of a lens—lentiform—is not it ? A

Lord Justice VAUGHAN WILLIAMS : You do not accept "the form of a lens or lentil—sides double convex."

Mr. WALTER : I do not know it. It may be the form of a lens—lentiform ; but, whatever it is, "lentiform," I should have thought was about as bad a trade mark as could ever have been thought of—equally B bad with "pearloid" and "tabloid."

Lord Justice VAUGHAN WILLIAMS : I should like to know also might a man who sold round pills, and nothing else, take the trade mark of "octagon"?

Mr. WALTER : I should have thought not. C

Lord Justice VAUGHAN WILLIAMS : Why not ?

Mr. WALTER : Because it might possibly be held to be the nearest shape to the round—pills are never exactly round. I have not considered the question of "octagon" as applied to a pill ; it might be a fancy word.

Lord Justice VAUGHAN WILLIAMS : I did not know an D octagon was the nearest shape to a pill.

Mr. WALTER : If it was obviously non-descriptive——

Lord Justice VAUGHAN WILLIAMS : It would, would it, if it was non-descriptive ?

Mr. WALTER : Obviously if it was non-descriptive. E

Lord Justice VAUGHAN WILLIAMS : Although "octagon" has a meaning ?

Mr. WALTER : The fact that a word has a meaning is no criterion at all.

Lord Justice VAUGHAN WILLIAMS : I entirely agree. F

Mr. WALTER : It is in respect of the goods to which it has to be applied. May I deal very shortly with my learned friends' arguments. There are, as far as I can gather, three lines of argument which are used by my learned friends, one is an *ad misericordiam* appeal, for which purpose they quote Bass's trade mark, and vaseline, and say : We have been so G long on the register, please do not take us off. That is the first line of argument. The next line of argument is to erect, if I may say so, a lot of nine-pins which I never set up, and then proceed to demolish them.

Lord Justice VAUGHAN WILLIAMS : I think your account of the first argument is a description of it much in the same sense that an H octagon is a description of a sphere.

Mr. WALTER : I hope to justify my comment upon the argument that has been used, for otherwise why should the fact of 20 years on the register be used at all in this case if it is not an *ad misericordiam* appeal ? Whether it has been on 20 or 50 years cannot possibly affect the question I of whether or not the word "tabloid" was a good trade mark at the time it was registered, other than as some evidence that nobody had either the money or the courage to attack a firm of the standing of Messrs.

Burroughs & Wellcome with the means at the disposal of that firm to maintain their trade mark.

Lord Justice VAUGHAN WILLIAMS: Would you like, before you leave your description of the argument, for me to read you from the Chesebrough Trade Mark case—"Vaseline"—first the description by Lord Justice Stirling, and then the description by Lord Justice Cozens-Hardy of the same argument: "It was contended, however, that the burden of establishing this"—this is on page 8—"did not lie on the Appellants, but that it was the duty of the Respondent, the applicant for the removal of the trade mark from the register, to satisfy the Court that it was, in fact, not so used. In my opinion, this contention is well founded. The law was so laid down by the Court of Appeal, consisting of the Earl of Selborne, Lord Chancellor, and Lords Justices Cotton and Fry, in *In re* Leonard and Ellis's Trade Mark, and was acted on by Mr. Justice Kay in *In re* Edgington's Trade Mark. In my judgment, this rule ought to be firmly adhered to. It is manifestly unreasonable to expect that the owners of a registered trade mark should preserve evidence of the way in which it was used at and prior to the time of registration for a long period, in this case of more than 20 years subsequent to registration." Lord Justice Cozens-Hardy says, on page 11: "Having regard to the fact that 'Vaseline' has been on the register for nearly a quarter of a century, I feel that the burden of proof rests strongly upon anyone who seeks to disturb such a long-standing position." I do not call that an appeal *ad misericordiam*.

Mr. WALTER: May I, my Lord, with submission say, "I concur."

Lord Justice VAUGHAN WILLIAMS. Then do not misname such things.

Mr. WALTER: But I do, my Lord, because I was in the Vaseline case, and supported, with my learned friend, Mr. Moulton, the Vaseline trade mark. The rules, which your Lordship has read, which were laid down by Lord Justice Stirling and Lord Justice Hardy, were perfectly correct as applicable to the facts of the Vaseline case. The facts in the Vaseline case were entirely different to this.

Lord Justice VAUGHAN WILLIAMS: I know; nobody says they are the same, but what I do say in half-a-dozen words is: That the longer a trade mark has been on the Register the stronger the *onus* in favour of the person who has registered it, and the stronger the *onus* against the person seeking to remove it.

Mr. WALTER: As a general proposition, with submission, I do not agree with that at all, because of the facts of that particular case. What were the facts of that particular case? It was contended against us in the Vaseline case that we had not used "Vaseline" to describe goods of our manufacture until we had patented and invented a particular substance to which it was alleged we had given the name "Vaseline," and an attempt was made to bring us within the Linoleum case and to say that our trade mark was a bad trade mark because we had used it in respect of a patented article.

Lord Justice VAUGHAN WILLIAMS: The facts in the case were

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such, if you recall them to your memory, that but for the rule being that which I have just suggested, a presumption in favour of a mark which had been so long on the register, and the onus of proof resting strongly on those who wished to remove it, the Chesebrough mark must have been removed. A

Mr. WALTER: Undoubtedly, my Lord, I do not for a moment doubt that position, I say that line of reasoning has no application to a trade mark of the character of "tabloid." The trade mark "tabloid" does not depend in any way for its validity upon the question of whether or not the true facts with regard to it are buried in the past; and it is not B fair to throw upon the trade mark owner the duty of supporting his trade mark in a state of facts where he is unable to obtain the evidence. That is a totally different thing. Here is a pure and simple question of law—aye or no, is tabloid a distinctive fancy word or words not in common use.

Lord Justice COZENS-HARDY: Is it a pure question of law? C

Mr. WALTER: No. It is a question for your Lordships ultimately as a Jury, I agree, directed by your Lordships primarily as Judges to decide the question. Your Lordship sees why I say it is an *ad misericordiam* appeal. "Twenty years" is only an appeal *ad misericordiam* to you as jurymen; and can have in this case no other significance. D

Lord Justice VAUGHAN WILLIAMS: And your use of the same shows that you have a most lively recollection that you are addressing us as a Jury.

Mr. WALTER: I say that in the Vaseline case it was essential. That rule was perfectly laid down that you could not in a matter of E 25 years—or it was rather more in that case, because it was before the sixties in the case of the Vaseline trade mark—it was quite early in the fifties or the sixties. The question was whether or not it had been used in respect of patented goods. They said it had, and therefore the trade mark must come off. In the absence of any absolute proof that it was F applied earlier to the goods Mr. Justice Buckley had to rule them out from the register.

Lord Justice VAUGHAN WILLIAMS: You are quite near enough in your date. I think you said early in the sixties.

Mr. WALTER: Yes, my Lord, early in the sixties. G

Lord Justice VAUGHAN WILLIAMS: It was 1875.

Mr. WALTER: 1875, my Lord?

Lord Justice VAUGHAN WILLIAMS: Undoubtedly that is what I read here. I will read it again if you like.

Mr. WALTER: It was much earlier than that. I remember a patent H earlier than that.

Lord Justice VAUGHAN WILLIAMS: Then I probably am wrong. "In 1877 a chemical manufacturer registered under the Trade Marks Registration Act 1875 the word Vaseline which had been invented by him to denote a product of his manufacture, the word being registered as an I old mark used by him six years before 1877."

Mr. WALTER: Yes, certainly, my Lord—six years before.

Lord Justice VAUGHAN WILLIAMS: Those are all the dates that

are given—there may be other dates, but those are the whole of the dates given.

Mr. WALTER : It carried it back I know.

Lord Justice VAUGHAN WILLIAMS : The Registration Act was in 1875 and the user was six years before 1877.

Mr. WALTER : It was carried back much earlier than that in the documents in the case.

Lord Justice VAUGHAN WILLIAMS : I daresay. You are sure to remember it rightly ; but it does not appear upon the head-note.

Mr. WALTER : Your Lordship remembers there were American specifications ; and according to my recollection the first patent was some where about 1865.

Lord Justice VAUGHAN WILLIAMS : The patents, yes ; I agree there. But that is not quite the same thing. There was a patent in 1865.

Mr. WALTER : That is the thing I knew.

Lord Justice VAUGHAN WILLIAMS : Robert Augustus Chesebrough took out a patent in England and America for an improvement in refining petroleum and other hydro-carbons, and this improvement consisted in so-and-so. In 1872 he took out an American patent, and he states in his specification that he has invented a new and useful product from petroleum which he has termed "vaseline."

Mr. WALTER : Quite so, my Lord. That was what they tried to make out, that we had applied it in 1872, and the question was whether we had not used it before 1865. As regards the Vaseline case, I say, my Lord, that time has not blurred any fact in this case, so as to prevent our deciding it now as well as it could be decided if this motion had been brought on in the end of 1884 or 1885, the year immediately afterwards. I say time cannot in any way affect the rights of the present applicants, who are persons aggrieved under Section 90 of the Act of 1883, to say that this is ~~not~~ a bad trade mark. The fact that for 20 years it has been on the register cannot in any way affect it. That is all I need say with regard to the question of the length of time that the mark has been on the register.

The next point was that my friend, Mr. Moulton, seems to suggest that our argument had been that the question was not to be decided by what was the state of things at the date of the registration, but that we have endeavoured to bring in evidence afterwards by saying that anything that had taken place after registration could affect the question. We have never argued any such position.

Lord Justice VAUGHAN WILLIAMS : He admits it now.

Mr. WALTER : We have never argued anything like that. Therefore it does come down to this question now—Aye or no, was the word "tabloid" a word of a class that could be registered in the year 1884 ? What is their sole answer in argument ? I have listened to see what argument they can give. Their sole argument is that "tabloid," if it implies anything, implies "table," and "table" primarily implies flatness. "Tablet" was a known name, but they do not deal with "tablet" at all. They simply say that "tablet" plus

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"oid" would imply flatness. So it does as opposed to a pill. A 'tabloid' is a flat form of disc as opposed to round pills. But is that any answer? If 'table' and 'oid' does imply flatness, I say the trade mark is perfectly bad. Their own admission I say puts them out of Court, if it means 'in the nature of a table.' It comes within the very objection which is laid down in the Bovril case, because it is *nihil ad rem* to say a table may have a slightly curved top. That is not the question. The Bovril case, your Lordship remembers, is the case that they appealed to as softening the asperity of the Melrose and Electric case. In that very case the direction is that to be a good fancy word it must be non-descriptive and meaningless as applied to the article to which it was intended to be applied. They admit that "table" plus "oid" might be what was intended. Can they say therefore that would be obviously meaningless and non-descriptive as applied to the goods to which it was intended to be applied? I say it is impossible. I say by this mere statement of their own derivation of the word, what they say might be understood to be the meaning of it, shows therefore that it is not a distinctive fancy word within the meaning of the Act.

There is only one other point. The issue as put by Mr. Moulton, was thus stated by him was "tabloid" a distinctive fancy word not in common use in 1884? That is a wrong statement of the issue. The true statement of the issue is was "tabloid" a distinctive fancy word not in common use as applied to the goods in connection with which it was to be used? But I ask in connection with these goods: If you had seen "tabloid," and nothing more, upon a bottle containing the particular goods, could anyone say in 1884 that "taboid" was a distinctive and a fancy word or words not in common use as applied to those articles?

Lord Justice VAUGHAN WILLIAMS: You said the question was, was "tabloid" what?

Mr. WALTER: Was "tabloid" a 'distinctive fancy word not in common use as applied to the goods in connection with which the mark was to be used—as applied, that is, to tablets, and as applied to the goods in connection with which the mark was intended to be applied.

Now, my Lord, after all it is only a repetition of the argument. I say that really is the whole centre round which this case hinges, and I say that, stating the proposition fully, as I state it to your Lordship, there can only be one answer, and that "Tabloid" trespasses against the rule as laid down in the Bovril case, as laid down in the Melrose case, and against the rule as regards an inventive word in the Solio case, and that if "oid" is registrable as regards "Tabloid," every word in future in respect of which "oid" may be suffixed, every coined word, coined by applying the suffix "oid," must hereafter be a good trade mark; and I ask your Lordships, before allowing on the register a word like "Tabloid," to consider that it must be a governing decision, that every other word compounded in future from a word, plus the termination "oid," will *ex necessitate*, however descriptive, be hereafter a good trade mark, and the result will be that the register will be immediately filled with "oids." And, my Lord,

as I have said, in addition to this, the whole case, as put forward by my learned friend, has been that we have not educated the public, we have not attempted to educate the public with regard to this, and this action which has been brought in the first instance against us is not founded upon any use of the word "Tabloids" by us other than in response to the order for 'tabloids,' we having heaps of orders for goods which are never sold by Burroughs & Wellcome, which are ordered as 'tabloids,' notwithstanding the fact that Burroughs & Wellcome did not make them, did not keep them, and the goods are acknowledged to be, and are described as 'tabloids,' but are ordered by the public, who do not understand the meaning of the word, by the word "tabloids." Mar. 28, 1904

My Lord, for the reasons I have given I ask your Lordship to say that this appeal should succeed.

(Adjourned to to-morrow morning at 10.30 o'clock.)

In the Supreme Court of Judicature.

COURT OF APPEAL.

ROYAL COURTS OF JUSTICE,
28th March, 1904.

BEFORE—
LORD JUSTICE VAUGHAN WILLIAMS.
LORD JUSTICE STIRLING and
LORD JUSTICE COZENS-HARDY.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816. Registered in the names of BURROUGHS, WELLCOME & CO., and HENRY SOLOMON WELLCOME (trading as Burroughs, Wellcome & Co.)

—AND—

IN THE MATTER of the Patents Designs & TRADE MARKS' ACTS, 1883-1888. Appeal of THOMPSON & CAPPER from Order of Mr. Justice Byrne.

SECOND DAY.

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.,
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Appellants' Solicitors.

MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Respondents' Solicitors.

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Tel. No. 1077 Holborn.

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In the Supreme Court of Judicature.

COURT OF APPEAL.

ROYAL COURTS OF JUSTICE,
Tuesday, 29th March, 1904.

BEFORE—
LORD JUSTICE VAUGHAN WILLIAMS,
LORD JUSTICE STIRLING and
LORD JUSTICE COZENS-HARDY.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816. Registered in the names of BURROUGHS, WELLCOME & CO., and HENRY SOLOMON WELLCOME (trading as Burroughs, Wellcome & Co.).

—AND—

IN THE MATTER of the PATENTS DESIGNS & TRADE MARKS ACTS, 1883-1888. Appeal of THOMPSON & CAPPER from Order of Mr. Justice Byrne.

[*Transcript from the Shorthand Notes of* Messrs. HODGES & SON, *87, Chancery Lane, W.C.*]

Mr. A. J. WALTER and Mr. J. H. GRAY appeared on behalf of the Appellants (instructed by Messrs. SHARPE, PARKER & Co.), Agents for Messrs. ALSOP, STEVENS, HARVEY & CROOKS, of Liverpool.

Mr. J. FLETCHER MOULTON, K.C., M.P., Mr. RALPH NEVILLE, K.C., Mr. E. L. LEVETT, K.C., Mr. L. B. SEBASTIAN, and Mr. D. M. KERLY appeared for the Respondents, instructed by Messrs. MARKBY STEWART & Co.

JUDGMENT.

Mar. 29, 1904 — Judgment.

Lord Justice VAUGHAN WILLIAMS: This, in a sense, is rather a difficult case, not in the sense, however, that the law is difficult. I do not think there is much difficulty in point of law. I think one may say generally of the law that it is now defined by Van Duzer's case as modified by the Bovril case, and I do not think that the law thus defined is very difficult to ascertain. But ~~that~~ this case is a difficult case, because it is really a question of fact which we have to decide here, and

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—
Judgment.

that question of fact is : What did the word "tabloid" convey to those who heard it at the date of the registration in 1884? The difficulty of answering that question is very considerably increased, of course, by the lapse of time. We have had quoted to us dictionaries and literary productions which have been published during the whole period between 1884 and the present time, and I do not think really that that sort of evidence has assisted us much. In fact I go a step further; I think that that sort of evidence has had a direct tendency to make our task more difficult, because it is difficult to eradicate altogether from one's mind the statements which have been made about the user of this word "tabloid," and its meaning at the material date, and everybody agrees that that is the date of the registration. But this case is not the first case in which the Courts have had to deal with that sort of difficulty. I think, as appears from the passages which were read yesterday from the Judgments of Lord Justice Stirling, and Lord Justice Cozens-Hardy in the Chesebrough case, that the Court when it has had to deal with a question of fact of this sort, long after the date of the registration has laid down a rule that in such a case the presumptions ought to be in favour of the persons who have had that registered trade mark for a length of time; and the onus of proof as to what was the user of the word, and what it was understood as conveying at the date of registration, ought to be thrown upon the persons who seek, after such a lapse of time, to say that the trade mark ought not to have been registered. But I should be very sorry if it was supposed from what I am saying that I in any way meant to suggest that this sort of presumption in favour of ~~the~~ a trade mark which has been registered for such a period ought to be allowed to overmaster the plain evidence showing that the trade mark, having regard to the state of things at the date of the registration, ought not to have been registered. I take it if you had something registered as a trade mark which the evidence showed clearly ought not to have been registered at the date when it was, that no presumption would justify us in keeping such a trade mark on the register.

Now I have to ask myself here: What was the character of this trade mark in 1884? What did the word "tabloid" convey at the moment when it was registered? In my judgment I will say, shortly to begin with, that I think this word "tabloid" was, at the time of this registration, a distinctive word suggesting the source, or the origin, of the goods which were covered, or intended to be covered, by it; and I think, further, that at this date the word "tabloid" was not a descriptive word. I think that as the word was understood at that time it really conveyed to the hearers no peculiar quality of these goods which were offered to the public. I think that the word "tabloid" may properly be described at that time as being a fancy word. I do not think myself that, having regard to the judgment in the Bovril case, it could be said that a word is to be treated as a descriptive word because it might suggest some idea to the hearer. It seems to me that the trade mark which was under discussion in the Bovril case proves the contrary. It is perfectly impossible to say that the word "Bovril," used in respect of an extract

of meat, did not suggest beef, and an ox, as the materials from which the extract was made. But the mere fact that the word "Bovril" did contain such a suggestion to my mind is inconsistent with the idea that the fancy word must be absolutely unsuggestive. It must not be descriptive, but it need not be absolutely unsuggestive. Speaking of this, I do not like to add that it is not to the interest of any community that you should so deal with any subject matter which is regulated by Statute Law as to make the rule of law that you deduce from the Statute, inconsistent with the practice of mankind. Nobody supposes that when you are going to sit down and choose a fancy name that you ask someone to make a selection at haphazard from a dictionary of a number of words, and that you then put them into a bag, and dip your hand in, and leave it to chance what word it is that you select, and then use that word however foreign it may be to the subject matter to which you propose to apply your trade mark. The real fact of the matter is that a man sits down to choose his trade mark, and his mind will naturally run on words that are more or less cognate to the articles with reference to which the trade mark is proposed to be registered. He sits down and does that, and, having done that, his next care is that the cognate word that he so chooses shall not be such that it really describes the quality or the form of the article to which the trade mark is meant to apply. When one is dealing with this question of whether a word is descriptive, I think one must always bear in mind that for a word really to be descriptive, it must describe something which is material to the composition of the article to which the trade mark is intended to apply. If it does not, I do not think that one ought easily to arrive at the conclusion that the word is descriptive because it in some way or other might suggest, or even more than suggest, might more or less describe the particular style in which the person registering has been in the habit of making up his goods, although, of course, that is always a course which must be adopted with great care, because he must be careful never to violate that rule which one has to apply in respect to trade marks, namely, that you must not adopt as your trade mark any word whatsoever which would deprive the public of the full and free user of that word when it is a known word, and especially when it is a known word in a particular trade. But, subject to those observations, I say not only is this word distinctive, but in my opinion, it is not a descriptive word.

Now I am not forgetting at the present moment that which Mr. Walter and Mr. Gray pressed on us very much. They said that the present case was a case to be distinguished from the Bovril case, because "oid" was a known termination of English words, and that "ril," which was the final syllable of "Bovril" was not; and they, as I understood, argued this, that the result was that in "Bovril" you had got a word which suggested it might be "ox" or "beef" as the substance out of which the soup was made, but that that did not matter as the word was, strictly speaking, a fancy word, not being a word in the English language at all. Now I want to say with reference to that, that according to my view, this word "tabloid" was, in substance, an unknown word at the moment when Messrs. Burroughs & Wellcome adopted it. It is quite true that you could find a good many words which were properly

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terminated with the suffix "oid," and which were familiarly used by English speaking people; but in the main I think that those words will be found not to be words of English origin. I think they were words which did not at all set one's teeth on edge when one heard them, as "tabloid" rather does mine. They were words like "trapezoid," A "aneroid," and other words in which the first or commencing syllable as well as the suffix, was of Greek origin. But I doubt very much whether "oid" had then become, as it has become now, a recognised termination for English words. Therefore, at all events, be that how it may, I do not think that, if you took the average B Englishman in 1884, the word "tabloid" in respect to these medicines would have conveyed anything to his mind at all. And even at the present moment there seems to be a great difficulty in saying what it is which the word "tabloid" is supposed to convey. Certainly, if you take the meaning of the word "table," or "tablet," it does not suggest, to my C mind, anything of the form of these tabloids which were produced and sold by Messrs. Burroughs & Wellcome. But I say, as a juryman, that this is my conclusion in fact, and I cannot express that conclusion in better words than it is expressed by Mr. Justice Byrne at the bottom of page 453 in the print, which I have before me of his Judgment. D This is what he says: "I think the case is near the line, but treating it as a matter of fact in the particular case, 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 E to the jury." Really I should prefer, or rather should have preferred, to express my judgment in this shape, that I entirely agreed with the Judgment of Mr. Justice Byrne. I think that this word is a fancy word in that it was a coined word; I think that it did not describe anything intelligibly in 1884 to those who heard it. I F agree that you cannot say that the word is absolutely unsuggestive, but any suggestion which you derive from it is a very inaccurate suggestion as to shape, and an inaccurate suggestion as to a matter which was in no sense essential, or of any practical materiality in the articles to which it was applied. G

There is only one other matter upon which I propose to make any observation at all, and that is on ~~the~~ that part of the argument which was based upon the previous user of the word "tablet." I think that the word "tablet," although that of course was an accepted English word, did not really convey anything material about the article to which the trade H mark was to be applied. Then can it be said that because Messrs. Burroughs & Wellcome registered the word "tabloid" two years afterwards ~~that~~ their previous user of the word "tablet" converted that which, but for that previous user, would have been an invented word, a coined fancy word, into a word ~~that~~ such by that time, by their previous user of I the word "tablet," had acquired a meaning. I do not think so. Of course this is really only part of the matter that one has to consider as a matter of fact, and I am, notwithstanding that previous user of the word "tablet," of opinion that "tabloid," when first adopted as a trade mark by Messrs. Burroughs & Wellcome, did not intelligibly describe anything.

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Under these circumstances I have only thought it right to mention what was said about the word "tablet," and the user of it as a trade mark, to show that in arriving at the conclusion of fact which I have arrived at I have not left that argument out of consideration.

A In my judgment, the Judgment of Mr. Justice Byrne is quite right.

Lord Justice STIRLING: In this case the validity of the registration of the words "tabloid" and "tabloids" under the Trade Marks Act of 1883, as applied to substances used in medicine and pharmacy, is called into question. The registration is justified upon the ground that at the B date at which it took place, namely, 1884, the word "tabloid" was a distinctive fancy word not in common use. I think there is no contest that the word was not in common use in the year 1884. It appears to have been a word coined at that date, and if it was not in common use at that time it might fairly be taken to be distinctive. Therefore I do not enter into any discussion as to those words "distinctive or in common use." The real contest in this case is whether these words were in 1884 "a fancy word or words," or not. Now, the meaning of those words, "fancy word or words," as used in the Act of 1883, has been considered by the Court of Appeal in two cases, namely, D in Van Duzer's case, and in the case of the trade mark, "Bovril," and, of course, by those decisions we are bound. The first of those cases, namely, Van Duzer's case, with which was heard another case called Leaf's case related to the application, in the way of a trade mark, of the words "Melrose" and "electric," words which were not new at the time, E and some matters were laid down with regard to the meaning to be attributed to the words "fancy word or words" which were supposed to extend to all cases; but that matter came to be reconsidered in the Bovril case, which had to deal with a word which, like the word "tabloid," was a new one at the date of its registration.

F Now it appears to me, as I think it appeared also to Mr. Justice Byrne, that the proper course in this case is to deal with the present case relating to the word "tabloid" in the way in which the Court of Appeal dealt with the word "Bovril" in that case. Now what does Lord Justice Lindley, who gave the leading Judgment in that case, say G is the proper thing for him to do? He says, "It would be altogether wrong for us to take the Act of 1883 and substitute for the words 'fancy word,' 'a non-descriptive word.' That is not the language of the Legislature. But I agree that a word which describes the article to which it is applied will not do. Let us, therefore, ask ourselves whether 'Bovril' H is a descriptive word." Then he says, "To my mind it is not descriptive, notwithstanding Mr. Bower's very ingenious argument. He tries to make it out to be a descriptive word, not by taking the word, but by taking a little bit of it, and he says that because 'Bov' may have some relation, and does have some relation to 'ox,' therefore 'Bovril' describes I what? I do not see that it describes anything at all." Then later he says: "I think it is pre-eminently and purely a question of fact. Now, I ask myself this? Supposing that a jury were asked to say whether, on November 2nd, 1886, 'Bovril' was a fancy word not in common use, and

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supposing they said, upon a direction from the Judge, which I think it would be the duty of the Judge to give, that if they were of opinion that it really intelligibly described the thing sold it would not do, could they, with that direction, reasonably say it was not a fancy word not in common use. I do not think they could." Now I think that that is the process which we ought to apply to this word "tabloid" which we have to consider here. Mr. Justice Byrne has taken that course, and his answer to the question has been already read, therefore, I do not repeat it. Speaking for myself, I can only say that I entertain greater doubt than he seems to have entertained, or than is felt by my brother, as to the result of the evidence in this case. Mr. Justice Byrne said that there was a suggestion or atmosphere of description about the word as used, but he came to the conclusion that it could not be said to have been other than a fancy word.

Now I should like to state the difficulty which occurs to me. The question which we have to consider is whether it was a fancy word when it was invented in the year 1884. Now in dealing with that question we must not treat it in an abstract manner, but see what were the circumstances which preceded the introduction of the word. I think we start with this: that before 1884 the word "tablet" was well-known in connection with medicines. I find in the Imperial Dictionary, published in the year 1874, that is 10 years before, this meaning: "A medicine in a square form: tablets of arsenic were formerly worn as a preservative against the plague. A solid kind of electuary or confection made of a dry ingredient usually with sugar and formed into little flat squares; called also lozenge and troche. Also applied to anything made up in a flat, square, shape, as a tablet of soap." Further, we know this, that for some years previous to 1884 this very firm of Burroughs & Wellcome had found that a convenient and useful mode of making up medicines was to make them up in the form of what they called 'tablets' which were, speaking broadly, small amounts of substances of globular shape, and they had sold medicines so made up under the name of "tablets," and in fact they had registered the word "tablets" as their trade mark in connection with these preparations. They appear to have been advised that "tablets" was a word the registration of which could not be maintained, and they applied themselves to see whether they could not find another word which could be used apparently for the same purpose as the word "tablets" had been used before. Now they fixed on the word "tabloid." What does "tabloid" suggest? It suggests a connection either with "table" or "tablet." It is registered as applied to preparations for use in medicine and pharmacy. We have not heard at all of the use of the word "table" in connection with medicine or pharmacy, but, as I have already stated, we have heard of the use of "tablet," and it seems to me that it might be inferred from the evidence which we have in this case, that the word "tabloid" had a descriptive meaning. The termination "oid" is one which is not uncommon in words which are used in the English language, and it means of a shape or kind similar to that which is denoted by the early part of the word to which "oid" is affixed. I confess I feel a great deal of hesitation as to whether the true inference of fact to be drawn in this case is not whether "tabloid" did not mean, as applied to a medicine, a

preparation made up not precisely in the same form as that which had hitherto been designated under the name "tablet," but of something of the same kind, and whether it is not descriptive in that sense. But Mr. Justice Byrne has taken a different view, and my brethren both take the same vie as Mr. Justice Byrne; and I think in deciding this question it has to be borne in mind that, as laid down in the Vaseline case, when a trade mark is impeached after so long a distance of time as occurs in this case, it is fair that if any doubt exists the person who has had his trade mark on the register for that long period, and has openly and largely made use of it, should have the benefit of the doubt.

For these reasons I am not prepared to differ from Mr. Justice Byrne, or my brethren, and therefore think that the Appeal fails.

Lord Justice COZENS-HARDY: I share to a large extent the difficulties which have pressed on Lord Justice Stirling. If this case had fallen to be decided 10 years ago I cannot doubt that the mark would have been taken off the register as not being "a distinctive fancy word not in common use." But the swing of the judicial pendulum has been very great, and the extreme point of that swing is to be found, I think, in the present case.

The real difficulty is, I think, in putting a meaning on the word "fancy." It certainly means something more than new or newly coined; and certainly means something more than "invented." The real difficulty is to say what more is involved in the use of the word "fancy."

The present case is extremely near the line, but reading, as I have done very carefully, the last decision of the Court of Appeal, namely, the Bovril case, by which, in so far as it may qualify earlier cases, we are bound, I am driven to the conclusion that, although this word is suggestive of description, it is not necessary that the word should be absolutely unsuggestive of it, and I cannot find here in the present case anything sufficiently near to description to enable me to distinguish it from the Bovril case. As a juryman, I am not able to say that "tabloid" really intelligibly described a thing, to use the words of Lord Justice Lindley, or that it is otherwise than non-descriptive and meaningless as applied to the articles in question, to use the words of Lord Justice Lopes.

Under these circumstances I cannot say that Mr. Justice Byrne was wrong in declining to remove from the register a mark which had been on for nearly 20 years, and I agree, therefore, that the Appeal must be dismissed.

Mr. MOULTON: The Appeal will be dismissed with costs?

Lord Justice VAUGHAN WILLIAMS: Yes.

In the Supreme Court of Judicature.

COURT OF APPEAL.

ROYAL COURTS OF JUSTICE,
29th March, 1904.

BEFORE—
LORD JUSTICE VAUGHAN WILLIAMS,
LORD JUSTICE STIRLING and
LORD JUSTICE COZENS-HARDY.

IN THE MATTER of the TRADE MARKS Nos. 36154, 36155, 42378, 42379, 225812, 225813, 225814, 225815 and 225816. Registered in the names of BURROUGHS, WELLCOME & CO., and HENRY SOLOMON WELLCOME (trading as Burroughs, Wellcome & Co.)

—AND—

IN THE MATTER of the Patents Designs & TRADE MARKS' ACTS, 1883-1888. Appeal of THOMPSON & CAPPER from Order of Mr. Justice Byrne.

JUDGMENT.

SHARPE, PARKER & CO.,
12, New Court,
Carey Street, W.C.
Agents for ALSOP, STEVENS, HARVEY & CROOKS,
Liverpool,
Appellants' Solicitors.

MARKBY, STEWART & CO.,
57, Coleman Street, E.C.,
Respondents' Solicitors.

PRINTED BY GEO. BARBER,
FURNIVAL PRESS: { FURNIVAL STREET, HOLBORN; AND
CURSITOR STREET, CHANCERY LANE, E.C.
Tel. No. 1077 Holborn.

The "Tabloid" Trade-mark Case.

BURROUGHS WELLCOME & CO. *v.* THOMPSON & CAPPER.

In this action the Plaintiffs seek to restrain the Defendants by injunction from passing off as "Tabloids" compressed tablets not made by Burroughs Wellcome & Co. Defendants respond by moving that the words "tabloid" and "tabloids" should be removed from the Register of Trade-marks, whereupon the Plaintiffs call eminent physicians, pharmacists, and others to prove that "tabloid" means Burroughs Wellcome & Co. products, and the Defendants adduce rebutting evidence.

(The hearing by Sir Edmund Widdrington Byrne, K.B., Judge of the Chancery Division of the High Court of Justice, has extended to seven days, and is still proceeding.)

CHANCERY COURT NO. 2 has been the scene of an action of pharmaceutical historic interest since our last issue. The questions for Mr. Justice Byrne to decide are whether the word "tabloid," which Messrs. Burroughs Wellcome & Co. claim as their exclusive property, is a valid trade-mark, or whether they have acquired a trade-name in it, and whether the defendants have "passed off" other goods as theirs. The word has been on the register since 1884, but is now challenged by Messrs. Thompson & Capper, of Manchester. They claim the right to sell any make of compressed tablets when tabloids are asked for, and when sued for having done so, they reply by an application to rectify the register by the removal of this mark.

The case was opened on Friday, November 20, and the Judge settled down for a long hearing. In the absence of Mr. Fletcher Moulton, K.C., leading counsel for the plaintiffs, Mr. Neville, K.C., opened. By his side was Mr. Levett, K.C., and behind him were Messrs. Sebastian and Kerby, both well known in trade-mark cases. For the defendants Mr. Walter and Mr. Gray appeared. Another K.C. sat in front of them throughout the trial and watched the case, but took no part in it.



Mr. Wellcome: Polite but persistent.

The opening was dull and decorous. The Judge's interpolations only indicated a question revolving in his mind whether "tabloid" is sufficiently distinctive from "tablet" to be entitled to be regarded as a genuinely invented word. Mr. Wellcome was the first witness, and altogether he spent four luxurious hours in the box; luxurious, that is, if cost ensures luxury. In reply to the questions of his counsel he briefly narrated the history of his firm and their reason for inventing this and other words as trade-marks. It appeared that the firm now employ about 1,200 persons. They have made their trade-marks known by extensive advertising in The Chemist and Druggist and other trade-publications and with equal persistency in the medical journals; and by special diaries sent for the past eight or ten years to every medical man, nurse, and chemist and druggist whose name they could get. These were produced as well as a large array of packages of tabloids and "tabloid" brand medicine-chests. Trade-catalogues, showing that other firms quote B. W. & Co.'s goods as "tabloids," and that other makers of compressed medicines do not use the word were also submitted. Mr. Walter, in the course of a lengthy cross-examination, did his best to convict Mr. Wellcome, chiefly from advertisements in various Chemists' and Druggists' Diaries, of having used the word "tabloid" generally. He pressed him with quotations from *Punch*, the *Academy*, the "Latin Grammar of Pharmacy," and certain novels in which the word had been found. "The word seems to be spread about pretty largely," said counsel. "We have done our best to spread it," was the witness's reply.

What is a chemist to do when tabloids of medicines not made by them are asked for? He had a list of a hundred such demands. There were phosphorine, pareira brava, lobelia 3, and others. The poor chemist was left to his perplexity.

Again and again counsel begged for information as to the definite meaning of "tabloid." Politely but persistently Mr. Wellcome replied that it means B. W. & Co.'s products. How came it that the Century Dictionary gave a different definition of the word in its second edition to what appeared in the first? Had he made any representations? Mr. Wellcome said he had; the editors had investigated the matter, and had made the suggested correction.

Had this writ been served on the defendants without any previous notice?—Mr. Wellcome believed it had, but such matters he had left entirely to his solicitors.

Mr. Neville briefly re-examined, and managed to get in the letter of the editors of the Century Dictionary, in which they said they had investigated the history of the word "tabloid," and promised in future editions to give it as the property of a special firm. Considering the interests involved in his case Mr. Wellcome's evidence throughout was singularly free from anything like assertiveness.

Then followed the evidence of a dozen witnesses from a solicitor's office in Manchester. Two of these were solicitors, and the rest were girls and lads. A few took prescriptions, others took written orders, and some asked verbally for tabloids. One of the solicitors when given tablets said he remarked "These are not tabloids!"

The assistant replied, he said, "Yes they are." One youth said he went for cascara-sagrada tabloids. He stumbled over "sagrada." "But of course you did not stumble over "tabloids'?" sarcastically asked Mr. Walter. One lad said he put his thumb over "tabloids" on a written order which he presented. It appeared, however, that all he meant was that he pointed to the word. The Judge was a little interested in the "dispensing" of the prescriptions of tabloids. This generally required about an hour. "It seems to me they only copy it in a book and hand over the articles," he said. "Oh, they write a label as well," said Mr. Walter; "they keep up the mystery."

This stage of the case was completed at 1 P.M. on Saturday, and the Court rose for its half-holiday.

Monday was occupied almost entirely by the evidence of medical and pharmaceutical experts. Two more Manchester purchasers, who alleged that they got tablets from the defendants when they asked for tabloids, were disposed of early, and then followed some notable witnesses. Sir Francis Laking, who feels royal pulses; Sir Patrick Manson, who modestly confessed to a share in recent famous investigations into malaria; Dr. Macalister, officially responsible for the British Pharmacopœia; Sir Anderson Critchett, who is specially interested in ophthalmic tabloids; Dr. A. P. Luff, eminent in both medicine and pharmacy; and other consultants all asserted that when they prescribe "tabloids" they intend that Burroughs Wellcome & Co.'s products should be dispensed. All admitted that often, for extra precaution, they add the firm's name or initials, and Mr. Walter was naturally curious to learn why this consideration should be shown to some patients and not to others. In one instance the Judge came to the rescue by suggesting that, perhaps, when such an ordinary medicine as bicarbonate of soda is prescribed, it may not be necessary to be so particular.



Sir Francis H. Laking,
Who looks after the King's health and prescribes "tabloids."



Sir Patrick Manson
Has had some dealings with the malaria mosquito.

The medical witnesses were all asked, in cross-examination, whether patients ever intimate a desire to have their medicines prescribed "in tabloid form," and it appeared from the replies that such intimations are not unusual. Perhaps it is dawning on the guinea *clientèle* that if they pay the piper they have the right to call the tune. In this connection the public's comprehension of the term was raised, and a pretty epigram resulted from one of these discussions. Sir Francis Laking told Mr. Walter, as a parting shot, that the public ought not to buy their own medicines. "I presume, Sir Francis," mused Mr. Neville, as he rose to re-examine, "that if a man makes his own will and buys his own medicines, the will is likely to come into speedy operation.'



Dr. Donald Macalister,
Who has the B.P. in hand.

The pharmacists called on behalf of Messrs. Burroughs Wellcome & Co. included the President and Vice-President of the Pharmaceutical Society, but it was noticeable that neither of these paraded his official dignity. Mr. Druce came from Oxford, Mr. McAdam and Mr. Foster from Glasgow, Dr. Walsh from Dublin, Mr. Wilson from Southampton, the other Mr. Wilson from Harrogate, Mr. Peet from Liverpool, Mr. Waring from Bucklersbury, and Mr. F. A. Rogers from Oxford Street to support the tabloid creed. The examination and cross-examination of these witnesses, though doubtless important, tended to become somewhat monotonous.



Mr. McAdam
Has no particular objection.

Mr. McAdam, however, favoured the audience with a little diversion by misunderstanding one of Mr. Walter's questions. "You would not wish to infringe a trade-mark if you could help it?" "I should have no particular objection," answered the head of the Glasgow Apothecaries' Company, after a moment's consideration. The Judge put this matter right, however, by repeating the question.

Mr. Lionel Newbery, Mr. George Barclay, and Mr. Woodgate (representing Messrs. W. Edwards & Son), and Mr. Burroughs, of John Thompson (Limited), Liverpool, explained that in filling chemists' orders they always regard orders for tabloids as calling for B. W. & Co.'s goods, and some of these lists were shown. It appeared that the sections devoted to tabloids were revised by Messrs. Burroughs Wellcome & Co.

Dr. Paul, ex-editor of the *Pharmaceutical Journal*, Mr. A. C. Wootton, ex-editor of The Chemist and Druggist, and Mr. Want, editor of the *British and Colonial Druggist*, represented trade journalism, and their acquaintance with "the question before the Court" was airily discounted by Mr. Walter as having been derived from the plaintiffs' advertisements inserted in their respective journals, and not from any trade experience. To the journalists may be added Professor Attfield, editor of the British Pharmacopœia. Mr. Walter professed a degree of perplexity with him. Was he to regard him as representing doctors, chemists, or the public? The ex-teacher was equal to the occasion, however, and claimed a right to speak for all.



Mr. Harry Wilson, of Randall's,
Tells of the custom of the trade.

Tuesday opened with another brilliant galaxy of medical talent. Sir William Thomson, Sir Thomas R. Fraser, Sir J. Crichton-Browne, and Sir Douglas Powell followed each each other to the witness-rail, and soon afterwards Mr. Reginald Harrison, formerly of Liverpool, Dr. Whitehead of Manchester, and two Brighton doctors appeared. The wholesalers were effectively represented by Mr. J. Morgan Richards, Mr. Thomas Tyrer, Mr. Smith (of Sanger's), and Mr. Julius Fuerst. The last-named took the oath with his hat on. Pharmacy again figured prominently in the persons of Mr. Johnson, manager of the drug-department of the Army and Navy Stores; the present proprietor of Messrs. Mothersheads, of Manchester; Mr. J. F. Harrington, of Kensington; Mr. Morgan, of King's Cross; Mr. Buck, of Liverpool; Mr. Reeves, of Birmingham; Mr. Cruse, of Southsea; Mr. Guy, of Brighton; and Mr. Jackson, of Bradford. The evidence they all gave was of the one pattern which had grown so familiar, and the Judge once or twice very gently asked how much longer the procession was likely to continue. At last counsel for the plaintiffs intimated that, though they had yet a long string of medical and pharmaceutical witnesses from various parts of the country, they would close their case by putting in a long investigation into dictionary literature and medical works, the effect of which was that the word tabloid had only appeared in a few recent editions of dictionaries, and had apparently been copied from the Century Dictionary, where it appeared for the first time in 1899, and had subsequently been corrected.



Mr. Burroughs, of Liverpool,
Tells that the trade knows B. W. & Co.'s products are the only tabloids.

Mr. Levett filled up the remainder of the sitting—about forty minutes—with a skilful summing-up of the case which had been presented, and, in reply to the Judge, Mr. Walter said he should not call many witnesses—he would rely rather on quality than quantity—which was a little rough on the baronets and other eminences which the Court had been listening to.

Messrs. Thompson & Capper's case was opened on Wednesday by an argument of considerable force presented in effective style. Mr. Walter spoke for nearly three hours, and illustrated all his points by frequent quotations from decided cases. On the trade-mark part of the case he first contended that "Tabloid" was registered under the Act of 1883 and must be ruled by the definitions of that statute. It must have been a distinctive fancy word, and (basing his argument on the "Electroid" and other cases) he contended that it could not come within that definition. Even under the Solio case, which admits "invented words," though they are descriptive, he found that "tabloid" did not fulfil the conditions of invention laid down by the Lord Chancellor and Lord Herschell. The word was merely tablet-oid, of the nature of a tablet, and such a combination was not within the benefits which the House of Lords granted to invented words. Then he insisted that no proof whatever of infringement of trade-mark had been offered.

The first witness for the defence was Mr. Francis manager of Messrs. Thompson & Capper's Piccadilly (Manchester) business. He supported the statements counsel had made, showed the orders referred to (most of which apparently were for homœopathic "tabloids"), produced the prescription-book in which the prescription said to have ordered tabloids with Burroughs Wellcome & Co.'s name against them was copied, but which addition did not appear in the copy which was in his writing, and said he had no recollection of the occurrence at all. This witness was rather closely cross-examined by Mr Neville, especially in regard to the practice of putting up Burroughs Wellcome & Co.'s tabloids in bottles as tablets, and asked to explain how under such a system confusion and fraud could be prevented.

Mr. Rymer Young, of Warrington, told how both doctors and the public confuse tablets and tabloids, and produced a doctor's order for ammonol tabloids and a bottle of these which Messrs. Burroughs Wellcome & Co. had specially made for him, but which his customer would not take. He wanted ammonol tablets made by the Ammonol Company.

On Thursday the defendants brought their case to a close. After calling several Liverpool doctors, who had prescribed tabloids without specially meaning B. W. & Co.'s, Mr. Kilby Pears appeared and produced some four hundred orders for tabloids from the public and chemists, meaning his own compressed drugs. The cross-examination of this witness was particularly severe, and his own rather defiant manner and persistence in lecturing the Court added to the liveliness of the proceedings while he was in the box. Mr. Michael Carteighe, President of the Pharmaceutical Society for fourteen years, came next, and said the public generally regarded tabloids as synonymous with tablets, and he had found very much the same impression among medical men. Mr. Carteighe; Mr. Blaine, manager of Messrs. Woolley's retail shop in Manchester; Mr. T. F. Abraham; Mr. John Bain, of Liverpool; and Mr. Foster, of Scarborough, although they all found the word "tabloid" indiscriminately used by both the profession and the public, all admitted that they themselves regarded the word as descriptive of Messrs. Burroughs Wellcome & Co.'s goods.

Mr. Walter summed up his case, protesting against the attempt of the plaintiffs to limit the development of the English language; and Mr. Neville was replying generally when the Court rose.

In the Chancery Division of the High Court of Justice on Friday, November 20, Mr. Justice Byrne commenced the hearing of this action. Mr. Fletcher Moulton, K.C., Mr. Ralph Neville, K.C., Mr. Levett, K.C., Mr. Sebastian, and Mr. Kerby appeared on behalf of the plaintiffs; Mr. A. J. Walter and Mr. J. H. Gray were counsel for the defendants.

Friday's Hearing.

Opening Statement for the Plaintiffs.

Mr. Neville, in opening the case, said that the plaintiff, Mr. H. S. Wellcome, traded under the title of Burroughs Wellcome & Co. The action was brought by Mr. Wellcome against the firm of Thompson & Capper, carrying on business in Liverpool and Manchester, and the claim against them was for passing off goods not of the manufacture of Burroughs Wellcome & Co. as the goods of those manufacturers under the name of "Tabloid" or "Tabloids." With regard to the cases of passing off he did not anticipate much difficulty, but beyond that lay the more important question as to the plaintiffs' exclusive right in the use of the words "tabloid" and "tabloids" as indicating medicines of their manufacture. Burroughs & Wellcome were a firm who vended medicines in a compressed form. This method of preparing medicine was invented some years ago, as early as 1842. In 1872 a gentleman in London took out patents for medicine in compressed shapes which he called "compressed pills," and sold them under that designation. In 1884 Burroughs & Wellcome, having then a large business in these compressed medicines, desired to find out a satisfactory trade-mark which should indicate the make of that particular firm, and which would be sufficiently attractive and convenient to be generally adapted by the public. Mr. Wellcome himself, who was the surviving partner of the old firm of Burroughs & Wellcome, and still traded under the name of Burroughs Wellcome & Co., hit upon the name of "Tabloid," and in 1884 he registered "Tabloid" in the classes of drugs and foodstuffs. In 1885 he registered "Tabloids." The usual defence had been adopted in this case. As a counterblast to the plaintiffs' attempt against them, the defendants had moved to strike their mark off the register. The defendants were moving to strike out all the plaintiffs' marks for "tabloid" and "tabloids" which were now on the register. In that sense the validity of the trade-mark came before the Court.

Mr. Justice Byrne: Do you rely on the trade-mark as well as on the passing off?

Mr. Neville said the plaintiffs did rely on the trade-mark. It was common knowledge that at and after 1884 the firm of Burroughs & Wellcome was very widely known not only in England, but throughout Europe, as vendors of compressed medicines, and they became renowned not only for the quality of their drugs, but for the accuracy of their doses. So far was this recognised by the medical profession that it was a common course for medical men in writing prescriptions to prescribe "tabloid," thereby intending both the quantity and quality of the doses. In many instances they preferred to rely on the accuracy of the drugs made up and compressed by Burroughs & Wellcome, rather than upon the accuracy of the chance dispenser, as far as the quantity of the drug was concerned. That was a matter in some cases of the highest importance. Messrs. Burroughs & Wellcome, by special machinery adapted for that purpose, and by a long dealing in this particular manufacture, had acquired a proficiency which was recognised throughout the world. The first of these compressed medicines of the plaintiffs was the "Voice-tabloid."

A specimen-case of samples of the different tabloids made by the plaintiffs was handed up to his Lordship.

Mr. Neville explained that the specimens ranged from $\frac{1}{100}$ gr. up to considerable doses. The plaintiffs did not deal direct with the public, they did not advertise to the public, and they had no retail place of business at all. They sold only to the trade and the medical profession. Compressed medicines were of immense utility for travellers, and they were largely dealt in for that purpose. During the last few years, in consequence of occasional attempts to infringe what they conceived to be their rights, Messrs. Burroughs & Wellcome became more particular both with regard to the warnings they issued to the public and the use of inverted commas with the word "tabloid," and so on.

Mr. Justice Byrne sent the usher to his room for a bottle of "tablets" which he had himself bought; but when it was brought his Lordship did not enlighten his audience as to the make of the article.

Mr. Neville said tablets were made by several defendant makers He was told there were at least fifty or sixty defendant makers of tablets. But he thought he would be able to establish beyond the possibility of doubt that it was perfectly well known throughout the medical profession and the trade that "tabloid" was the registered mark of the plaintiffs, and he did not think any respectable traders would come forward and say that they had intentionally sold medicines other than those of Burroughs & Wellcome as tabloids. They ought not to have done so if they had done so. At all events, the plaintiffs could show that since 1884 to the present time, on every single occasion when it had reached their ears that anything of the kind was going forward, in the only three cases of actual infringement that they knew of they commenced actions, and in every one of these actions the defendants did not dispute the claim and consented to an injunction. In this particular case there had been no toleration of any infringment of what the plaintiffs claimed to be their rights. The plaintiffs had never heard of a single instance of infringement or use of the word "tabloid" under circumstances which would indicate that it was a word of general import, and not a word of origin indicating the plaintiffs' goods, without remonstrating, and in every case remonstrating with effect.

A Conversation about Words.

Mr. Justice Byrne: If you wanted to describe the shape of an old-fashioned acidulated drop, what shape should you call it? I should have thought "tabloid" was an exact description of it: it is like a table, and somewhat oviform. It may be it is in consequence of your use of the word that I have got the impression that it is the proper word for it.

Mr. Neville: That is exactly what I was going to suggest.

Mr. Justice Byrne: It is a very happy word for expressing the shape.

Mr. Neville said he thought "tabloid" did not exist and was never used by anybody until 1884. Undoubtedly Mr. Wellcome supposed he invented it, and his Lordship would, he thought, find it could not be found in any literary form of any sort. It was a word unknown to the world in 1884. It was very widely known to the world now.

Mr. Justice Byrne: It is after the fashion of words like "spheroid."

Mr. Neville said that since 1884 a large number of words ending in "oid" had come into use. Of course, there were certain scientific words which had the "oid" termination before 1884. But there was no "tabloid," and no word like it. Now, no doubt, if you asked a person what a tabloid was, he would say "a little medicine." He had no doubt they would have witnesses who would say they had known tabloids for years, and understood them to mean a little medicine of a particular shape. The plaintiffs had never dealt with the public, and had never advertised to the public; and their case was that the trade were the people with whom they dealt, and that there was not a man in the trade who would not know that "tabloid" was the plaintiffs' trade-mark, and that they asserted the exclusive right to the use of it.

Mr. Justice Byrne pointed out that in Johnson's Dictionary of 1882 the suffix "oid" was clearly used to denote form. "Spheroid" was there defined as an "oblong or oblate body, approaching to the form of a sphere."

Mr. Neville did not deny it, but said that in a great many cases "oid" did not mean shape or form.

Mr. Justice Byrne: You ask me to av-oid that conclusion. (Laughter.)

Mr. Neville said he did. It was not until 1893 that it came to the knowledge of the plaintiffs that an attempt was being made to infringe their rights. They brought an action, and the case was undefended. In July, 1902, the same thing occurred, and in October of the same year there was a similar case. In consequence of rumours which reached the plaintiffs that the word was being used, and that goods were made and sold, although not of their manufacture, in 1896 they issued a circular to the trade on the practice, and that course they had continued to pursue. There were an immense

number of manufacturers and dealers in compound medicines, but in not a single instance was the description "tabloid" used except in the case of the plaintiffs. All the dealers in compressed medicines had used their own description, and never used "tabloid" except as descriptive of the goods of the plaintiffs. If "tabloid" only meant a little medicine of a particular shape, that would be incredible. This was a case of very great importance.

Mr. Justice Byrne: It is undoubtedly a very valuable mark.

Mr. Neville said it was a case in which he should not be able to compress the evidence. He would have to call before his Lordship a great many of the leading medical men in the profession to give a consistent account of their knowledge of "tabloid" as the plaintiffs' trade-mark, and their intention when they used the word "tabloid" in their prescriptions. He would call also a number of the pharmaceutical branch of the trade as well to show how complete throughout the trade was the knowledge of the word as denoting plaintiffs' goods.

Mr. Justice Byrne: I have a recollection that a medical man sometimes puts "B. & W."

Mr. Neville said that sometimes it was put.

Mr. Justice Byrne: You say in practice "tabloid" means it?

Mr. Neville: Yes, without any "B. & W." at all. Some of the doctors will tell you they put "B. & W." in order to avoid possible mistake, but others only put "tabloid" as being sufficient.

The learned counsel went on to say that the plaintiffs' mark was registered under the Act of 1883. Section 64 of the amending Act read:

> A name of an individual, a written signature, a distinctive device, an invented word or invented words, or a word or words having no reference to the character or quality of the goods, and not being a geographical name.

At the date of the plaintiffs' registration "Fancy word or words not in common use" was the test which had to be applied to a word which was proposed for registration under the Act. The plaintiffs came under the Act of 1883, and the question for the Court was whether their mark ought to be on the register. He should submit that the register ought not to be rectified.

After a long reference to decided cases,

Mr. Justice Byrne said that tablet with reference to a medicine of a square form was as old as Lord Bacon.

Mr. Neville said that was so, but he submitted in 1884 "tabloid" was a new word, and experience showed that it was not a word that trespassed upon the rights of other persons, either physicians or medical men. Supposing "tabloid" was not a good trade-mark, the plaintiffs were going to prove that "tabloid" was and had been for a great many years known as representing the manufacture of the plaintiffs, and that it had got to be known by all the trade to mean Burroughs & Wellcome's manufacture. If they proved that, he said again they were entitled to succeed against the defendants, because they would prove defendants gave other goods in answer to a request for tabloids. Supposing both those contentions failed, they still had a good case against the defendants, because in cases where the order was for "tabloids, B. & W." goods were passed off to the customer not of the plaintiffs' make.

Mr. Justice Byrne: Yes, if actually struck off you may be entitled to the word.

Mr. Neville: Still entitled in the action.

Mr. Justice Byrne: That is exactly what happened in the Somatose case—the word was struck off.

Mr. Wellcome Tells the History of Tabloids.

Mr. Henry Solomon Wellcome was called as the first witness. He said he is now the sole proprietor of the firm of Burroughs Wellcome & Co. The business was founded in 1878, but he did not become a member of the firm until 1880. Mr. Burroughs died in 1895. Witness employed about twelve hundred people. When he first joined the firm it was associated with Messrs. Wyeth, a Philadelphian firm. That terminated in 1888. There was an alliance between the two firms. From 1888 they had manufactured independently. They made their speciality the manufacture of compressed medicines. They first described them as "compressed pills," "powders," and "tablets." They registered the word "tablet" as a trade-mark.

What was the speciality about your compressed medicines?—The special feature of our products was the peculiar accuracy of dividing the doses and the care in regard to the composition of them, as well as the perfection of finish.

Did you invent any machinery to get this accuracy?—Yes; myself and my employés devised the appliances. The products are made from $\frac{1}{640}$ gr. to 60 gr. and upwards.

How can you divide a grain into 640 parts?—By weighing the substance and making up a given quantity that would, say, produce a thousand. Then by an ingenious mechanism that has the accuracy of fine watch-work we are able to secure the division of this into a thousand parts more accurately than you can weigh it.

What about the materials you use?—We take the most critical care to see that they are of exceptional purity and quality.

What sort of reputation has the compressed medicines your firm produces?—We are credited with having a good reputation.

In 1884 you thought of having some new name for your compressed medicines?—Yes, and the result of my efforts was the word "Tabloid."

That was an entirely new word?—Yes.

I think you registered it?—Yes.

Witness produced a number of his firm's price-lists showing how the word "tabloid" had been used.

Have you ever used the word "tabloid" in respect of anybody else's goods except your own?—Never. At first the word was not put in inverted commas, but that was done later to make it more distinctive.

In a large number of the price-lists produced by witness "Tabloid, Trade-mark," appeared, and one of them said "The registered trade-mark tabloid is an arbitrarily coined word or brand which designates specifically that goods supplied under this brand are manufactured by Burroughs Wellcome & Co." This list also said, "The sale of articles of any other manufacture when the word 'tabloid' is used in ordering is an infringement and unlawful." There were a number of other cautions issued by the plaintiffs, and showcases, &c., were exhibited showing that the goods of the plaintiffs were marked "Trade-mark, tabloid brand," &c. Each year witness thought the plaintiffs sent out 75,000 or 100,000 price-lists, and he said they advertised in the *British Medical Journal*, the *Lancet*, and THE CHEMIST AND DRUGGIST, and other trade and medical journals.

Under what description do you advertise your goods?—"Tabloid brand products."

Witness produced a specimen advertisement from THE CHEMIST AND DRUGGIST, and said he also advertised by sending round diaries to doctors, nurses, and chemists.

Have you during these years on some occasions found the word "tabloid" used by people with reference to goods not yours?—On several occasions.

Have you ever allowed that to pass unchallenged?—Never.

On three occasions you have actually gone to litigation?—Yes.

Do you find in other people's trade lists, wholesale and retail, any goods except yours described as tabloids?—No; in nearly every instance it says distinctly there that it is our trade-mark.

Witness was asked to look at the different articles complained of bought from the defendants, and he said he felt perfectly certain they were not manufactured by his firm.

Mr. Walter: There is not one that bears the word "tabloid."

Mr. Levett: They were supplied in answer to a request for "tabloids."

Cross-examined by Mr. Walter.

In 1883 did your firm register the word "tablets"?—Yes.

I believe you started warning the trade that any attempt to use the word "tablets" would be stopped?—Yes. That is, in connection with bi-convex compressed goods.

Did you abandon your trade-mark "tablets"?—We did years afterwards. We were advised it was not a strong mark.

Who invented the word "tabloid?—I did.

What is the meaning of the word "tabloid"?—It means Burroughs Wellcome & Co.'s products. (Laughter.)

Will you look at THE CHEMISTS' AND DRUGGISTS' DIARY for 1895, page 115. You will see there "Pepsin in scales. The dose is from 1 gr. to 3 gr., and is best given in powder or any other form of pepsin-tabloids, which are 1-gr. compressed tablets." What is the meaning of the word "tabloid" there?—It means tabloid brand.

Is there a word about tabloid brand? It says "Pepsin-tabloids, which are 1-gr. compressed tablets"?—It is quite true, and it was our product manufactured by us.

Was not the word "tabloid" when first used meant to describe the article?—Our make only. The article as made by us.

Do you mean to tell my Lord the word "tabloid," as used now, means to the public your goods?—Yes.

The word "tabloid" has got into the dictionaries, has it not?—Yes.

Did you go to the "Century Dictionary" people, and in the second edition get them to alter it?—I went to the editor and proprietor of the "Century Dictionary," and they investigated the matter, and reported to me that they found it only referred to goods manufactured by Burroughs Wellcome & Co., and therefore in the revised edition of it they inserted that it was a registered trade-mark.

THE CHEMISTS' AND DRUGGISTS' DIARY, page 133 of the 1883 edition, says, "The tablets of zymine (extractum pancreatis) afford the most convenient form for direct internal administration." You are using the word "tablet" there as describing the form of the article?—As the method.

Now look at the 1889 CHEMISTS' AND DRUGGISTS' DIARY, page 123. You speak there of a case of one or two tabloids. That means take one or two of the little articles?—Yes; our products.

What does a person mean when he goes in and asks for a tabloid?—He means Burroughs Wellcome & Co.'s products.

In 1898 you first adopted the word "brand"?—About that time.

I put it to you that in your catalogue of 1895 there is not a solitary use of the word "tabloid" where it is not used as a description of the article?—It was used as our trade-mark from the first.

The catalogue says, "The compressed hypodermic tabloids are now prepared by an improved method." What is a tabloid there?—A product only manufactured by Burroughs Wellcome & Co. We varied the shapes considerably.

What is a chemist to do, according to you, who receives an order for tabloids which you do not make?—He can refer back to the medical man if it is a prescription.

I have here a list of over a hundred articles which are not in your catalogue, and which are not stocked by you, for all of which I am going to produce the written orders for tabloids. What is the chemist to do? You do not make the goods and do not keep them?—I am afraid that is not an explanation that should be expected of me.

Do you suggest whenever the word "tabloid" is used your goods are meant?—I know nothing about those instances. The word "tabloid" is our word.

Is it not true that the word "tabloid" is a word of every-day use now—meaning these small articles?—No. We have endeavoured to make it a word of every-day use.

The *Academy and Literature* has an article headed "Wisdom in Tabloids." Does that mean wisdom from Burroughs & Wellcome's? (Laughter.)—We have not registered it in the class of "wisdom." (Laughter.)

Punch for March 4, 1903, has "Opera in Tabloid"?—We have not registered it in the opera class.

Other extracts of a similar nature were put to the witness, who said he should think they were the fruits of their advertisements.

Witness was then asked as to a reference to compressed tabloids in the *Practitioner*, edited by Dr. William Murrell, in 1887, which had relation to the goods of Wyeth, but he said that Wyeth never made tabloids, and the tablets which Dr. Murrell referred to were of his firm's manufacture.

I suppose the public are making a mistake when they ask for tabloids and they are not on your list?—Many people think we make products which we do not.

An advertisement of plaintiffs' firm in THE CHEMISTS' AND DRUGGISTS' DIARY for 1896 was then put to the witness which referred to the development of the "tabloid" system.

What is the tabloid system?—It means the administration of our products. Our products are made in various forms.

Extracts from other books were put to the witness, one of which referred to "time-saving tabloids," and another to "spiritual indigestion-tabloids." Witness claimed these as gratuitous advertisements.

The hearing was then adjourned.

Dictionaries on "Tabloid."

Saturday's Hearing.

When the Court resumed on Saturday Mr. Wellcome was further cross-examined by Mr. Walter. He said he knew Cassell's Dictionary, 1902. That Dictionary said:

> Tabloid—English table, suffix oid. As adjective—resembling a tabloid; having the angles rounded; sub-angular. Used also loosely in the sense of tablet.

Asked what he said to that, witness replied that Messrs. Cassell had undertaken to correct it.

Standard Dictionary of the English Language, 1895: "Tabloid—*Pharm.*, a form of small tablet." Then, in brackets, "Table, noun, plus "oid"?

Witness: They undertook either to remove the word from the Dictionary or to place in it any definition I chose.

You do not think that it had become common in the English language at this date?—No. They have omitted it from the present edition. They investigated it, and found that it only applied to our products, and they omitted it.

The Century Dictionary, vol. vi., 1895: "Tabloid—table plus 'oid'; a tablet, a small troche, usually administered by the mouth, or, after solution, hypodermically"?—Immediately it came to my notice I saw the proprietor and the editor, and the latter undertook to make an investigation, and he reported to me that he found the words wa only applied to the products of our firm. It is an American Dictionary.

Encyclopædia Britannica, 1902, vol. xxi.: "The next change, observable after some hours, is that the untouched cells below the cut grow larger, push up the dead surface, and divide by walls tangential to it, with the formation of tabloid cork-cells." Are those yours?—I have not met with that reference before.

I suppose your letter will follow in due course to the Encyclopædia Britannica"?—That is the usual course.

I see in the *Tatler* of November 18, 1903: "The curious-looking compound of a bath-chair and bicycle is the latest development of what may be called tabloid motoring." Are those products of yours?—I do not think we are responsible for all the jokes in the *Tatler*.

Mr. Walter: I see in the *Daily Mirror*, November 5, 1903, a flat is called a "house tabloid."

Mr. Justice Byrne: What is the context?

Mr. Walter: "We have all of us taken tabloids. I am beginning to think we shall be tabloids before long."

Mr. Justice Byrne: Those must refer to these.

Mr. Neville: Unless they get their drugs from Messrs. Thompson & Capper.

The attention of witness was called to other extracts from newspapers in which the word "tabloid" occurred without any connection with drugs, and he said he had no doubt that was the fruit of their advertising.

It is all wrong for the *Pall Mall* of May 6, 1900, to speak of "the tabloid, whether you make it by the Allen & Hanbury machine," &c.?—I do not know what the Allen & Hanbury machine is. I have no doubt if we had an Allen & Hanbury machine we could make tabloids.

Have you seen the supplement to Webster's International Dictionary?—Yes, and we have an undertaking from them to correct.

"Tabloid—table, *plus* oid—a tablet-like preparation of one or more drugs or chemicals"?—The definition is without any knowledge of the source of the derivation.

You never used it in this sense?—Never in any sense except to describe the specific manufacture of Burroughs & Wellcome.

What was the specific manufacture?—A variety of products divided with unique accuracy and of exceptional quality.

That is what "tabloid" means?—Yes.

You never used it in the sense of a tablet-like preparation

of one or more drugs or chemicals?—I do not take it so. It depends upon what your idea of the shape of a tablet is.

The suffix "oid" is a very common one?—It has been common recently. I should say it is mainly due to the extensive advertising of the "tabloid" products.

Witness admitted that Burroughs & Wellcome did not benefit the English language by the introduction of a number of words ending in "oid," such as "conoid," "rhomboid," "celluloid," &c.

Mr. Walter said he could string out about a thousand.

Mr. Justice Byrne pointed out a number of chemical words, such as albuminoid, alkaloid, colloid, &c.

Mr. Walter then read out the meaning of "oid" in Murray's Oxford Dictionary, which was produced by his Lordship, to the effect that it referred to form, and asked witness if that was not what he intended when he called his articles tabloids.

Witness said he had not the Greek "-oeides" in his head.

What is the meaning of the word "tabloids"?—Burroughs & Wellcome's products.

Why plural?—Because they were divided doses.

But tabloid did that?—Yes. I cannot for the moment give you the reason for adding the "s" in our trade-mark.

"Tabloids" on the lid of a box meant a box containing tabloids?—Containing our products which we called tabloids.

What did the world generally think was the meaning of the word "tabloids"?—Our products. As soon as we made them known.

I observe in some of your advertisements there is, "Add B. W. & Co., or B. & W. to orders." What is that for?—Just the same as you sometimes fix a bolt on a door as well as a lock. It was simply an additional precaution.

In writing prescriptions the invariable practice of doctors in sending to chemists, if they want your preparations, is to add "B. & W."?—I should say the far greater practice is simply to use the word "tabloid."

A very large number use "B. & W." when they want your goods?—Occasionally, as an additional safeguard.

Messrs. Allen & Hanburys and Parke, Davis & Co. make these compressed goods?—They make many compressed goods.

What did you mean by adding the term to your advertisements of recent years "Tabloid Products"?—It was a change of phraseology.

Was it not trying to shift the centre of gravity from "tabloid" as descriptive to "tabloid" as a trade-mark?—It was in order to make easy phraseology, I think.

Witness was then asked as to other references to "tabloid," and particularly referred to a passage in the *Pharmaceutical Journal* for March 9, 1895, in which Sir Thomas Lauder Brunton was taken to task for having used the word "tabloid." Sir Thomas said he was unaware it was a trade-mark, and he imagined he would indicate the kind of preparation he intended more exactly by the word "tabloid" than by "tablet." Witness said that Sir Thomas Lauder Brunton was a constant prescriber of their products, and he explained to him it was their products he referred to.

Origin of the Case.

Replying to further questions, witness said the defendants had a fair account with his firm. Somebody on his behalf began purchasing from the defendants in August, 1902.

Was any communication of any kind made to the defendants?—I am not aware of any.

Was the writ issued without any correspondence of any kind?—I believe so. The matter was left in the hands of my solicitors. I instructed that tests should be made in regard to the matter.

Your complaint is that as regards cascara-sagrada tabloids in three instances cascara-sagrada tabloids were ordered from Messrs. Thompson & Capper?—Yes.

Is there a single bottle labelled "tabloids" that you have obtained from any of your traps or tests?—I do not recall any.

Are they all labelled "tablets"?—I am not certain.

Mr. Neville: You may take it from me in no case is "tabloid" on them.

Mr. Walter: Do you think it right that no letter was written before the action?—I do.

That is your usual practice?—If one felt certain that it was being done habitually.

In the course of re-examination by Mr. Neville, witness said he received information of the existence of the substitution of other goods for those of his firm. It was in consequence of that he directed the orders to be given to the defendants. Allen & Hanburys had never sold any product under the name "tabloids," nor had Parke, Davis & Co. The former called their compressed medicines "tabellæ," and he believed the latter used the word "tablets." The tabloids of his firm were not always dispensed with their name on the labels to the public, though they were always so supplied to the chemists.

Evidence as to Purchase.

Miss Winifred Bevan Davies, examined by Mr. Neville, said she acted as clerk with Messrs. Slater, Heelis, Williamson, Colley & Tulloch, solicitors, Manchester. On their instructions on September 10, 1902, she went to the shop of Messrs. Thompson & Capper, 51 Piccadilly, Manchester. She took with her a prescription that had been given to her. The prescription was for "tabloid potassium chlorate, B. W. & Co." She handed it to a man in the shop, who said he would get it. She called later, and received a bottle and the prescription, which was stamped "Thompson & Capper."

Cross-examined: She had been to both the defendants' shops to try and identify the assistant, but had not succeeded. She was asked if she particularly wanted Burroughs & Wellcome's, and she said, "Yes." That was with regard to the tabloids. She asked for some Burroughs & Wellcome's tabloids, as well as the prescription, and as far as she knew she got them.

Are you certain "B. & W." was on the prescription when you handed it in?—I do not know.

Mr. Walter: I asked that because we have a copy of the prescription in our books.

Re-examined: Slater & Heelis gave her the prescription. (Witness corrected this and said it was a member of the firm named "Porter.")

Mr. Thos. Smith, articled clerk to Slater, Heelis & Co., said that in consequence of instructions he went to the defendants' shop, 51 Piccadilly, on September 12, 1902, for a small bottle of cascara sagrada tabloids, B. W. & Co He gave the assistant the list, and the assistant took a bottle from a case and handed it to him. He produced the bottle.

Cross-examined: You knew you were going for tabloids. You got a bottle labelled "Compressed tablets"?—I did not know at the time what I got. I never saw the bottle. I had heard before I went that Thompson & Capper were selling tablets as tabloids.

Do you suggest the assistant read the document?—Yes, I do. There was nothing but the list. It was a pure cash transaction.

Mr. F. G. Hooper, also a clerk to Slater, Heelis & Co., acting on instructions, went to defendants' shop in Piccadilly with a list which contained an order for cascara tabloids. He pointed out the words to the man in the shop, and was given a packet containing the bottle produced.

Cross-examined: The transaction was a kind of dumb-show business. The packet given him was wrapped up behind the partition.

Did you carefully put your thumb over "tabloids"?—Yes. (Laughter.)

Mr. Justice Byrne: Not in the sense you mean.

Witness said he put his thumb opposite to it.

Did you cover up "tabloids"?—I could not say. I do not know where I put my thumb on the list—I mean I put it opposite.

Miss Amy Ogden, a machinist, of Old Trafford, said that on September 30 she went to defendants' shop, 30 Deansgate, acting on instructions from Slater, Heelis & Co. She took a list, and said she wanted a bottle of chlorate-of-potash tabloids. The assistant gave her the packet produced.

Cross-examined: The compressed pellets she got were wrapped up when she got them. She asked for chlorate-of-potash tabloids.

Miss Florence Heap, acting on similar instructions, went to defendants' shop at Deansgate, Manchester, with a prescription, which she handed a man over the counter. She was handed the made-up packet she produced.

Cross-examined: She did not know what she was going for.

Mr. J. H. Bradburn, a clerk to Slater, Heelis & Co., went to defendants' shop in Piccadilly, Manchester, with a prescription in October last year. He handed the prescription to an assistant, and received the package produced.

Cross-examined: Nothing took place except that he handed the prescription in.

Mr. Dennis Chapman, another clerk, also took a prescription for "tabloid soda-mint." He was given a parcel, which he opened when he got back to the office.

Cross-examined: Is this your only expedition?—Yes. (Laughter.)

Mr. Francis Speke, another clerk, handed to one of defendants' assistants at 51 Piccadilly a paper ordering "saccharin tabloids," and pointed to those words. He said he was given a packet which he saw, when he got to the office, was marked "Saccharin pellets." It was wrapped up.

Mr. Leonard Heslop Dean, a solicitor, and managing clerk of Slater, Heelis & Co., went with Mr. A. W. Jones to the Deansgate shop and asked for a bottle of potassium-chlorate tabloids. He received a packet, being told they were 6*d.* a tin.

Cross-examined: You got compressed pellets?—Yes.

Mr. Percy D. Reed, a solicitor, and managing clerk to the same firm of solicitors, said he went with Mr. C. Williams to the defendants' shop at 51 Piccadilly. He asked an assistant for a bottle of chlorate-of-potassium tabloids. The assistant handed over the counter a tin box of chlorate-of-potassium pellets. He produced the box.

What did you say to that?—I said, "These are not tabloids, are they?" and he said, "Yes, they are." We left the shop.

Cross-examined: You saw "pellets" written on it?—Yes.

You were content to take that away with you?—I asked if they were tabloids afterwards, and was told they were. I went and asked for Burroughs & Wellcome's goods by asking for "tabloids."

Mr. Walter: I am much obliged. (Laughter.)

Mr. Hartas Hyam, another clerk, went to defendants' shop in Deansgate, Manchester, for a bottle of saccharin tabloids. The assistant gave him a small packet sealed up, up, which he produced.

Cross-examined: I see these are pellets?—Yes.

That was your only visit?—Yes.

The hearing was then adjourned until Monday.

Medical Evidence.

Monday's Hearing.

Dr. Arthur Pearson Luff, F.R.C.P., was the first witness on Monday. He said he had been in practice as a physician for seventeen years. He knew the compressed drugs sold by Burroughs Wellcome & Co. under the name of tabloids, and did not know the word in connection with the make of any other people except Burroughs Wellcome & Co.

In 1884 was there anything new in the idea of compressing drugs for administering in a convenient shape?—Oh, no; it was employed prior to that time.

If other manufacturers had been selling under the name of tabloid, you would have been likely to come across it?—I think almost for certain I should.

But you never have?—No.

Do Burroughs & Wellcome's advertisements come to the knowledge of the medical profession?—Yes.

In prescriptions the quality of the drugs is an important factor?—Extremely important.

And accuracy of dose?—Yes.

Have Burroughs & Wellcome's compressed medicines a high reputation in the market for quality of drugs and accuracy of composition of the doses?—Yes; in my experience they can always be relied on.

Do you in prescriptions, as occasion requires, specify for their drugs?—No; if I write the word "tabloid," I never put Burroughs & Wellcome underneath, because I expect only Burroughs & Wellcome's products will be specified if I put down "tabloid."

Do you use tabloids in prescriptions you write?—Yes, sometimes.

Intending Burroughs & Wellcome's products?—Yes, and none other.

In your opinion, in the profession is the use of the word "tabloid" or "tabloids" indicative of Burroughs & Wellcome's manufacture?—It is as far as I have talked with them at various times on the matter.

Have you ever heard of the word "tabloid" until it was used by Burroughs Wellcome & Co.?—No.

In case a physician prescribes something which a chemist does not keep and is unable to procure, what is the proper course in a case of that kind?—He would communicate with the physician who prescribed.

Cross-examined: The termination "oid" is very common?—Yes.

And means "of the nature of"?—Yes, "a likeness to."

You are aware, doubtless, that the word "tabloid" has become a word of general use?—Since it was employed by Burroughs & Wellcome, yes, I should say it has. I have only seen it in medical literature when it has referred to their products.

Witness was handed what he called a biconvex body, and having asked whether it was solid, and being assured that it was, said if it were made by Burroughs & Wellcome he should certainly call it a tabloid; if not, it was a lozenge or a tablet or a compressed substance. He did not know what the general public would call it.

Do you use "B. W. & Co." after the word "tabloid"?—No.

Mr. Wm. Henry Sykes, managing law clerk of Slater, Heelis & Co., said in August he went to the defendants' shop in Piccadilly, Manchester, with Mr. Brabazon. He asked for a bottle of Burroughs & Wellcome's cascara-sagrada tabloids. The assistant got a bottle from a showcase. Witness asked, "Are they Burroughs & Wellcome's goods?" and the assistant said, "Yes." Witness said, "Very well." Mr. Brabazon heard what passed. The same day he went to defendants' other shop, and asked for Burroughs & Wellcome's sulphonal tabloids.

Cross-examined: There was no communication made to defendants until five months after?—No.

You asked verbally for Burroughs & Wellcome's cascara tabloids, and you were told that the goods were their own?—I was led to believe that the goods were Burroughs & Wellcome's.

You were not told the goods were theirs?—I was not.

What did you get at the Deansgate shop?—A bottle with "Sulphonal tablets" marked on it.

You went to get tablets?—I went to get Burroughs & Wellcome's goods.

You went to get tablets?—Yes.

You got compressed tablets with Thompson & Capper on them?—I found that out when I got back to the office.

Mr. C. P. Brabazon, an articled clerk, corroborated the evidence given by the last witness.

The King's Physician on Tabloids.

Sir Francis Henry Laking, M.D., Physician in Ordinary to the King and the Prince of Wales, said he had practised as a physician for over forty years.

Do you know the compressed medicines sold by Burroughs Wellcome & Co.?—Yes.

Under what name?—As tabloids.

Do you yourself use tabloids in prescriptions?—Frequently. If I were to order a tabloid, I should expect it to be a drug or a small article manufactured by Messrs. Burroughs Wellcome & Co., but if I wanted a drug from any other house I should put their name underneath it.

Have you ever known of any preparations not manufactured or supplied by Burroughs Wellcome & Co. being supplied by the name "tabloid" or "tabloids"?—No. They are so extensively advertised by Burroughs & Wellcome that one can see it is a term always used by them. I think "tabloid" is a word manufactured by Burroughs Wellcome & Co. for themselves.

As far as your experience goes, tabloid has been confined to the manufacture of Burroughs Wellcome & Co.?—Certainly.

Cross-examined: You associate "tabloid" in your mind solely with Burroughs & Wellcome?—Yes. If I wished for drugs of another manufacturing chemist I should use their initials and put "tablet."

Do you know how the public use the word "tabloid"?—No.

Can you tell us any hing about the general use of the word "tabloid"?—No. I do not think it is a correct word at all. It seems a portion of Latin and a portion of Greek. It seems an hermaphrodite wor t.

As a term to describe a small material of the description I hand you "tabloid" is useful?—Yes; useful as anything else. Burroughs & Wellcome say it is their own property.

But the public is ignorant, and naturally ignorant, of what they do?—The public ought not to buy drugs at all without a prescription. (Laughter.)

I quite agree. It is like a man who makes his own will?—Yes, it is a mistake. (Laughter.)

More Medical Evidence.

Dr. Cornelius W. Suckling, of Birmingham, said that "tabloid" meant a compressed drug prepared by Burroughs Wellcome & Co.

Have you ever heard of any other manufacturer's drugs being described as "tabloids"?—No.

Witness agreed with what had been said by previous witnesses.

Cross-examined: Since 1893 Messrs. Burroughs Wellcome & Co. have circularised the profession *ad nauseam* and advertised *ad nauseam* their claim to "tabloid"?—I do not think so. I think lately they may have done so.

Do you know generally as to the use of the word "tabloid" by the public?—I find they very often buy these tabloids, and they ask for Burroughs & Wellcome's tabloids.

I quite agree. You put "B. W. & Co." on most of your prescriptions, I suppose?—Very often I do.

Do your patients ever talk about tabloids?—Yes.

They use the word generally?—I do not think they bother much.

By tabloid they mean a thing of *that* shape?—Yes.

And that is all they mean, is it not?—I do not know.

Re-examined: With regard to the thing in front of you, can you say whether it is a tabloid or not by looking at it?—I cannot possibly say.

It may be or may not be, according to your view of what the word means?—Certainly.

Dr. Donald Macalister (Cambridge), Chairman of the British Pharmacopœia Committee, said that the word "tabloid" had always meant in his mind the goods of Burroughs Wellcome & Co. He could not remember its employment in connection with the goods of any other maker. When he used the word he intended Burroughs & Wellcome's goods to be supplied.

Cross-examined: What shape is a tabloid?—The shape of a tabloid is a biconvex disc.

That is what I thought. Is not that what the public generally associate with the term "tabloid"?—I have seen the word referred to in connection with the possibility of reducing food to nothing but tabloids.

You have no difficulty in understanding what was meant by reducing food to a tabloid form?—No. I cannot say whether it is a word common in everyday use.

"General, Medical and Pharmaceutical."

Dr. John Attfield said he first heard of tabloids in connection with advertisements by Burroughs Wellcome & Co.

Have you ever known the w rd "tabloid" applied to drugs manufactured by anyone else?—No.

You think if that had been the case it would have come to your knowledge?—I do, because I have been associated for twenty years with pharmacy and medicine, having been the editor of the British Pharmacopœia for the Medical Council.

All this time what did the word "tabloid" convey to your mind?—A small piece of matter of a medicinal character associated with the name of Burroughs & Wellcome. Tablet had been used in connection with medicinal articles for a vast number of years.

Cross-examined: He had heard his friends use the word tablet in the sense he had used it—generally in reference to saccharin tabloids. If a newspaper spoke of getting knowledge in tabloid form he would understand that a compressed form was meant, Messrs. Burroughs & Wellcome having made him familiar with the term.

Re-examined: Messrs. Burroughs & Wellcome's tabloid drugs are very highly compressed?—Yes.

Dr. Francis De Haviland Hall, a physician, of Wimpole Street, said "tabloid" in his opinion referred solely to the make of Burroughs Wellcome & Co. He had never found the word applied to the goods of any other maker. He had never heard the word before it was employed by Burroughs Wellcome.

Cross-examined: He had added "B. & W." in writing out his prescriptions.

As the word has become better known that has become necessary?—As their drugs have become better known attempts have been made to imitate them.

You cannot tell us of the general use of the word "tabloid"?—No.

It indicates something to you?—A compressed drug made by Burroughs & Wellcome.

Shape?—Shape is immaterial. It might be square or oblong, or oval or round—any compressed drug made by Burroughs & Wellcome would be to me a tabloid.

To you "tabloid" is quite meaningless except as connected with Burroughs & Wellcome's goods?—Quite meaningless.

Dr. Lawrence Creasy, editor of the *Clinical Journal* and a contributor to the *British Medical Journal*, said the word "tabloid" conveyed to his mind a product manufactured by Burroughs & Wellcome. He had never known it applied to anyone else's manufacture. When he prescribed tabloids he expected chemists to provide Burroughs & Wellcome's goods.

Cross-examined: "Tabloid" meant a product of B. & W., quite apart from shape or anything of that kind.

Mr. George Claridge Druce, pharmaceutical chemist, 118 High Street, Oxford, said he had always associated the word "tabloid" with Burroughs Wellcome & Co. He had never heard of any other maker selling tabloids.

Are tabloids well known in the chemists' trade?—I am afraid I was going to say much too well known.

As the make of B. W. & Co.?—Entirely so.

You think the meaning of the word "tabloid" is well known in the chemists' trade?—Quite well known.

Cross-examined: You get prescriptions in which "tabloids" are found?—Very frequently, unfortunately.

It is not at all good for the chemist's trade?—No.

Are they frequently associated with the term B. & W.?—Very often so.

Your experience is, the medical man, of recent years, puts the manufacturer's name if he wants a particular manufacture?—Yes.

The public ask for tabloids?—Frequently.

Have you ever been asked for tabloids which are not in Burroughs & Wellcome's list?—No, I think that would be impossible.

If a person asks for "tabloid" merely, what do you do?—Always sell what I am asked for—Burroughs & Wellcome's preparations.

Mr. Robert McAdam, general manager of the Glasgow Apothecaries' Company, wholesale and retail chemists, gave similar evidence. He said he had seen an order from a medical man in the country for tabloids not of Burroughs Wellcome's make. This was about three weeks ago. The trade understood Burroughs & Wellcome's goods when "tabloids" were ordered.

Cross-examined: He agreed the common practice now was to put "B. W. & Co." He knew "Tabloid" was the registered trade-mark of the plaintiffs from their literature. He never troubled about what "tabloid" meant. The public asked for tabloids.

Mr. Geo. Henry Burroughs, sole director of Messrs. John Thompson (Limited), wholesale druggists, said he had been in business as a chemist for eleven years at 58 Hanover Street, Liverpool. "Tabloid" was a fancy name given to Messrs. Burroughs & Wellcome's preparation of a compressed drug. That was common knowledge in the trade. He never heard of the word "tabloid" before it came on the market as Burroughs & Wellcome's word. He had never known other makers sell their goods under the name of "tabloid." His business was wholesale.

Tabloid Treatment of Much Evidence.

Mr. Henry Peet, J.P. for the City of Liverpool, M.P.S., F.S.A., said he had been in business for twenty-five years, and had been associated with the business of a pharma-

ceutical chemist for thirty-three years. His evidence was to the same effect. When anyone came in for tabloids they supplied Burroughs & Wellcome's.

Cross-examined: "Tabloid" is now a household word. He had occasionally received orders for tabloids not of Burroughs & Wellcome's make, and then he communicated with the physician.

Mr. John Foster, chemist and druggist, Glasgow, gave evidence to the same effect. He remembered Wyeth's compressed tablets of chlorate of potash.

Cross-examined: A tabloid is something like a tablet.

Mr. Harry Wilson, F.I.C., F.C.S., pharmaceutical chemist, managing director of Randall & Son (Limited), Southampton, agreed that the public by "tabloids" meant the compressed drugs of the plaintiffs.

Cross-examined: They never got orders for tabloids except Burroughs Wellcome & Co.'s.

Mr. Samuel Ralph Atkins, J.P., a former Mayor of Salisbury and a retired pharmaceutical chemist, said that "tabloids" meant preparations of Burroughs Wellcome & Co That, he believed, was common knowledge to customers ordering tabloids.

Cross-examined: He retired from business seven or eight years ago. His recollection was that customers invariably used the words "Burroughs & Wellcome" as well as "tabloids."

Mr. J. H. Wilson, pharmaceutical chemist and a past Mayor of Harrogate, gave evidence to the same effect.

Sir Patrick Manson, F.R.S., medical adviser to the Colonial Office, &c., said he was partly responsible for having exposed the iniquities of the mosquito. (Laughter.) To his mind "tabloid" meant a special form of drug prepared by Burroughs & Wellcome. He frequently prescribed the plaintiffs' preparations.

Cross-examined: His patients had said they wanted tabloids, or medicine in "tabloid form."

They want it in a convenient form for travelling?—Yes.

Re-examined: You understood them to mean they wanted Burroughs & Wellcome's preparations?—Yes.

Dr. David Elphinstone Seton, of South Kensington, corroborated.

Mr. James Aloysius Walsh, Dublin, licentiate of the Royal College of Physicians and Surgeons and pharmaceutical chemist, had always associated the name "tabloid" with Burroughs Wellcome & Co. He had never known it used in any other way except by inadvertence.

Cross-examined: Do you think the public generally draw much distinction between tabloids and tablets?—They do in my experience.

They ask for tabloids?—They do.

More often than they ask for tablets?—When they require Messrs. Burroughs & Wellcome's goods. I think the majority of the public know that tabloids mean Burroughs & Wellcome's goods.

Dr. Benjamin Horatio Paul, pharmaceutical chemist, and formerly editor of the *Pharmaceutical Journal*, gave similar evidence.

Mr. Lionel Newbery, of the firm of Francis Newbery & Sons, Charterhouse Square, wholesale druggists' sundrymen, also said that "tabloid" was a drug compressed into a particular shape made by Burroughs & Wellcome. The trade knew that "tabloid" meant the products of Burroughs & Wellcome.

Mr. G. R. Barclay, managing director of Barclay & Sons (Limited), wholesale druggists' sundrymen, corroborated.

Mr. Alfred Chas. Wootton, a member of the Council of the Pharmaceutical Society, and editor for thirty years of THE CHEMIST AND DRUGGIST, said he was for ten years in business as a chemist. He had known the name tabloid since it was introduced by Burroughs & Wellcome.

What does it mean in your view?—Compressed drugs made by Burroughs Wellcome & Co.

Since they first came into the market?—Yes.

Have you always associated the word with Burroughs Wellcome & Co.?—Yes.

Have you associated it exclusively with their make?—Yes.

Have you ever known any other firm dealing with tabloids?—Never.

In the trade generally what is understood by "tabloid"?—So far as I know, every chemist understands the word "tabloid" to be the special property of Burroughs Wellcome & Co.

Mr. James Cantlie, F.R.C.S., &c., and lecturer at Charing Cross Hospital, gave evidence to the same effect.

Mr. William P. Want, pharmaceutical chemist, of Bishopsgate Street Without, and editor of the *British and Colonial Druggist*, gave evidence of the same character.

Mr. Sydney F. Harvey, M.R.C.S., said tabloids always meant Burroughs & Wellcome's preparations to the profession, and, he thought, to all chemists.

Mr. Albert Wynne Waring, chemist and druggist, Bucklersbury, and carrying on a retail business, took the same view.

Mr. Francis Alfred Rogers, pharmaceutical chemist, Oxford Street, W., corroborated.

Sir Anderson Critchett, Surgeon Oculist to the King, &c., said he had used both medical and ophthalmic tabloids. When he prescribed tabloids he meant the dispensers to supply Burroughs & Wellcome's.

Mr. Richard Woodgate, general manager of William Edwards & Sons, wholesale druggists' sundrymen, of Queen Victoria Street, took the same view of the word "tabloid."

Mr. Charles B. Allen, pharmaceutical chemist, High Road, Kilburn, corroborated.

Mr. Ernest Clarke, surgeon, of the Central London Ophthalmic Hospital, also gave evidence to the same effect.

Mr. Frederick Samuel Horsey, photographic dealer and optician, said he was a qualified chemist, and always associated tabloids with the make of Burroughs Wellcome & Co. He had never known any firm in the photographic trade dealing in tabloids except Burroughs Wellcome & Co. Customers asking for tabloids were supplied with the goods of the plaintiffs.

More Medical Magnates.

Tuesday's Hearing.

The first witness on Tuesday,

Sir William Thomson, C.B., M.A., M.D., M.Ch., F.R.C.S.I., Surgeon to H.M. the King in Ireland, Surgeon in Ordinary to H.M. the late Queen Victoria in Ireland, and Surgeon in Ordinary to the Lord Lieutenant, Ireland, President Royal College of Surgeons, Ireland, 1896-98, direct representative for Ireland General Medical Council, surgeon to Richmond Hospital, Dublin, chief surgeon Irish Hospital, South Africa, examiner in surgery Queen's University, and R.C.S. Ireland, &c., said he had associated the word "tabloid" with the goods of Burroughs & Wellcome. He believed that was the case of other medical men. He had never known the goods of any other firm to be described as tabloids. When he used the word "tabloid" in prescriptions he expected his patients to get Burroughs & Wellcome's tabloids. As a general rule he did not put "B. & W."; but he did it in cases where a poisonous drug was prescribed.

Cross-examined: "Tabloid" had no meaning to him except beyond its association with the variously shaped drugs of Burroughs Wellcome & Co. Patients had told him they would like their medicines in tabloid form, and by that he understood they wanted them in a compressed form. He had taken tabloids as large as a two-shilling piece. (Laughter.) He attached no importance to the form so long as the compressed drugs were supplied by Burroughs & Wellcome. He had never met the word "tabloid" in *Punch* or general literature. (Laughter.) If he did he would know the meaning conveyed—that was something in a small bulk and in a compressed form. A "tabloid meal" could be consumed in less than three minutes—very much. (Laughter.)

Sir T. R Fraser, of Edinburgh, gave similar evidence. "Tabloid" meant a pharmaceutical product manufactued by Burroughs Wellcome & Co. He had recommended the products of Burroughs & Wellcome under the name of tabloids.

Cross-examined: When he prescribed tabloids he expected his patients to get medicine of a particular shape made by the plaintiffs.

Sir James Crichton Browne, F.R.S., &c., said he is now only in consulting practice. The word "tabloid" in the medical profession meant compressed drugs manufactured by Burroughs & Wellcome. He did not know what was in the mind of the inventor, but he at first thought it came from "tabula," a table, and "oid." If that were so it was

in a compressed form, or it would have been "tabuloid." When he prescribed tabloids he meant his patients to get Burroughs & Wellcome's products.

Sir Richard Douglas Powell, K.C.V.O., M.D., F.R.C.P., M.R.C.S., &c., Physician Extraordinary to H.M. the King, and Physician in Ordinary to H.M. the late Queen Victoria, consulting physician to the Middlesex, Brompton, Ventnor, and St. Marks Hospitals, ex-President Clinical and Medical Societies, and Vice-President Royal Medical Chirurgical Society, &c., of Wimpole Street, said he knew the drugs sold under the name of "tabloid." They were drugs in compressed form manufactured by Burroughs & Wellcome only. He had prescribed the drugs under the name "tabloid."

Cross-examined: He had sometimes added "B. & W." The idea, to his mind, of "tabloid" was that it was something like a little table.

Mr. Levett said they had an infinite number of doctors.

Mr. Justice Byrne said that if the plaintiffs called all the doctors who had heard of their preparations,

The Evidence would be Exhaustless.

Mr. Leonard Johnson, manager of the drug-department of the Army and Navy Stores, gave similar evidence. He said that Burroughs & Wellcome's goods were catalogued under the name of "tabloids." In the trade "tabloid" meant a compressed drug made by Burroughs & Wellcome only.

Cross-examined: In a large number of instances "B. W." was put after "tabloid." They had had orders for tabloids in prescriptions which were not in Burroughs & Wellcome's list. He knew that drugs in a compressed form were intended, and they had them made by Burroughs & Wellcome. People seldom brought prescriptions for tabloids which were not in their ordinary list. He did not recollect any orders for proprietary medicines not made by the plaintiffs as "tabloids."

Re-examined: Burroughs Wellcome & Co. made "tabloids" for them which were not in their list.

Mr. Justice Byrne pointed out that the list produced described the goods of the plaintiffs as "Tabloid products" and "Tabloid-brand products."

Mr. Neville said the plaintiffs had nineteen more medical witnesses, who would say exactly what the others had said.

Mr. Justice Byrne said so many leading practitioners had been called that he would be bound to take it that "tabloid" to them meant what had been said. He would, however, hear the evidence of smaller medical practitioners—a class which had not been so well represented.

Pharmaceutical and Medical.

Mr. Albert Blackburn, chemist, Manchester, with twenty-four years' experience, said he agreed with the evidence given by other witnesses to the effect that "tabloid" was a compressed drug or tablet prepared by Burroughs & Wellcome. In his opinion, it was common knowledge in the trade that "tabloids" were the make of the plaintiffs.

Cross-examined: He should say that a tabloid was a tablet, but that a tablet was not a tabloid. He would take it that "tabloid products" referred to a class. He had had orders for "tabloids" made of drugs not listed by Burroughs & Wellcome. In such cases he had consulted the prescriber. If Burroughs & Wellcome did not make what was prescribed he would say so, though he might know in his own mind that tablet was intended.

Is the hand of Burroughs & Wellcome so heavy on the trade?—No, not at all; but if a slip is made in a prescription I am not bound to follow it. If "tablets, B. W. & Co.," were ordered he would supply "tabloids"; but if "tabloids, B. W. & Co.," were ordered he would not supply "tablets."

Dr. Allen, of Brighton, a general practitioner, corroborated. When he had any doubt about the respectability of the dispenser he added "B. W. & Co." as an additional precaution.

Cross-examined: "Tabloid" conveyed no meaning to his mind beyond that it was a solid pharmaceutical product of Burroughs Wellcome & Co.

Dr. Whitehead, of Manchester, consulting surgeon to several hospitals, always associated "tabloids" with Burroughs & Wellcome. Until quite recently he never added "B. W. & Co."

Cross-examined: He had never troubled himself about what tabloid meant.

Supposing I said to you "I want some medicine in tabloid form."—I would not discuss the matter with you. (Laughter.) My idea of a tabloid is something like the shape of the thing I have in my hand.

Witness said he had never heard of "tablets" before. Burroughs & Wellcome made tabloids of the drugs he was in the habit of ordering. He had never come across patients who knew better than he did what was the matter with them and asked for their medicines in tabloid form. (Laughter.)

Dr. Edward Treves, of Brighton, general practitioner, gave similar evidence.

Cross-examined: What is that in front of you?—It looks to be a tabloid. (Laughter.)

Mr. Walter: It is not. (Laughter.)

Do you know any tabloid that is not approximately of that shape?—No.

Mr. Reginald Harrison, F.R.C.S., Lower Berkeley Street, said he practised for twenty years in Liverpool. He agreed with the other witnesses that "tabloid" meant a drug compressed in a convenient form by Burroughs Wellcome & Co.

Cross-examined: He thought "tabloid" meant a drug compressed in the form of a tablet. If he were asked for "knowledge in tabloid form" it would call up visions of Burroughs Wellcome & Co. (Laughter.)

Mr. Justice Byrne asked if the prescriptions sent to the defendants' shop were real prescriptions.

Mr. Neville did not think they were.

Mr. David Frederick Smith, a member of the firm of John Sanger & Co., wholesale druggists' sundriesmen, 2 Winsley Street, Oxford Street, said he had been with the firm for thirty-eight years. He had known drugs sold under the name of tabloids ever since their introduction by Burroughs & Wellcome.

To your mind, what does "tabloid" mean in the drug-market?—Drugs compressed by Burroughs Wellcome & Co.

Is that the common knowledge in the trade in your opinion?—So far as I am aware.

Witness went on to say that a very large number of orders for tabloids came without any name or initial. Sometimes orders came initialed "B. & W.," and some for "tabs. cascara" or "tabs. antipyrin."

Cross-examined: "Tabs." was an abbreviation of the word "tabloids" as they understood it.

Mr. Thomas H. Cruse, pharmaceutical chemist, Southsea, knew the word "tabloid" in connection with the preparations of Burroughs Wellcome & Co. only. Before that time he had heard of and sold tablets. "Tabloid" in the drug-trade meant compressed drugs or medicinal preparations of Burroughs Wellcome & Co. He had never known the word "tabloid" applied to the manufactures of any other firm. If they got a prescription with "tabloid" prescribed they gave the patient nothing but Burroughs & Wellcome's. Most frequently the prescriptions they got used the word "tabloid" only.

Cross-examined: During the last few years it had become the practice of doctors to put "B. & W." more frequently. They never had an order for tabloids which were not Burroughs & Wellcome's goods. Before he was aware "tabloid" was a trade-mark he always looked upon it as indicating Burroughs & Wellcome's products. There were any amount of tablets, but to his mind tabloid indicated a particular manufacture.

Tabloid and tablet have nothing in common?—They are very much alike, but it does not follow that tablets are tabloids. A tabloid must be a tablet.

A tabloid must be a tablet, but a tablet need not be a tabloid?—That is according to my way of thinking. (Laughter.)

Mr. Thomas Tyrer, F.I.C., F.C.S., managing director of the Sterling Chemical-works at Stratford, E., said he had been acquainted with the chemical and drug trade for forty years. In his view "tabloid" was a word used entirely and solely in association with the products of Burroughs Wellcome & Co.

Cross-examined: His firm supplied Burroughs & Wellcome and many others. If he went into a pharmacy and asked for tabloids, he would expect to get Burroughs & Wellcome's preparations.

Mr. William James Carr, manager of the retail photographic department of Messrs. Benetfink, Cheapside, gave

evidence as to "tabloid" in the photographic trade meaning Burroughs Wellcome & Co.'s advertised proprietary article.

Cross-examined: The majority of orders came for tabloids, but many for tabloid brand.

Mr. John Morgan Richards, manufacturer of proprietary medicines, 47 Holborn Viaduct, said "tabloid" was associated with the products of Burroughs Wellcome & Co. and no other manufacturers.

Cross-examined: He knew that "tabloid" had been Burroughs & Wellcome's trade-mark, and regarded it as their exclusive property.

Mr. Sydney Rogers, chemist and druggist, Southsea, understood "tabloid" as the compressed products of Burroughs Wellcome & Co. He had not heard the word applied to the goods of any other makers.

Mr. David Morgan, pharmaceutical chemist, 293 Pentonville Road, King's Cross, gave evidence to the same effect.

Mr. Anthony Smith Buck, chemist, 179 Bedford Street South, Liverpool, also said he had never heard the word "tabloid" applied to the products of any other firm except the plaintiffs.

Cross-examined: "Tabloid," to his mind, had a very defined meaning: it meant a Burroughs & Wellcome's article.

Mr. Thomas Lewis Reeve, chemist, Birmingham, corroborated the evidence of the last witness.

Mr. Jules Fuerst, a member of the firm of Fuerst Brothers, chemical-merchants, 17 Philpot Lane, said that in the wholesale trade "tabloid" only applied to the goods of the plaintiffs. They always supplied Burroughs & Wellcome's goods in answer to orders for developers in tabloid form.

When you get tablet form what do you supply?—Other manufacturers'. "Tabloid" is a well-known trade-mark.

Cross-examined: They only touched the plaintiffs' photographic goods. His firm first introduced photographic developers in tablet form. At that time Burroughs & Wellcome were not in the market.

What is the difference between tablet and tabloid form?—Everyone knows "tabloid" is a trade-mark.

Bar the trade-mark, it is six of one and half a dozen of the other, is it not?—That may be; it might not.

Re-examined: When the word "tabloid" was used it meant that they must supply Burroughs & Wellcome's, and no other.

Mr. John Frederick Harrington, chemist, 45 High Street, Kensington, said the meaning he attached to "tabloid" goods or tabloids was only in connection with the compressed goods of Burroughs Wellcome & Co.

Cross-examined: Tablets were made by other makers. There was no association between "tablets" and "tabloids." Outside Burroughs & Wellcome's preparations "tabloids" was a meaningless word to him.

Mr. George Davison, managing director of Kodak (Limited), said in his trade "tabloid" meant a form of compressed developer manufactured by Burroughs Wellcome & Co.

Cross-examined: "Kodak" was an absolutely meaningless word when it was invented. He looked on "tabloid" as an invented word. He thought it was merely a good-sounding word for advertising-purposes.

Mr. Frederick Guy, of the firm of Glaisyer & Kemp, chemists, Brighton, said "tabloid" in the drug-trade conveyed the idea of a compressed product of Burroughs & Wellcome only.

Mr. Thomas W. Davies, a qualified chemist with the plaintiff firm, said he wrote the prescription taken by Miss Winifred Davies to the defendants' shop. The letters "B. W. & Co." were written at the same time as the rest.

Mr John Jackson, senior partner of the firm of Harrison, Parkinson & Co., manufacturing chemists at Sun Bridge Road, Bradford, held the same view as to the meaning of the word "tabloid" as previous witnesses.

"Tabloid" in Literature.

Mr. C. J. S. Thompson, in the employ of Burroughs Wellcome & Co., produced a list of dictionaries and medical works in which the word "tabloid" did and did not appear. He said the first dictionary in which he found it was the "Century," published in 1899 to 1901. There was no reference to "tabloids" in the last edition of the British Pharmacopœia in 1898.

Mr. Justice Byrne: There is something in my list which is not in the one handed to Mr. Walter. It is nearly the oldest of all—Remington's "Practice of Pharmacy," 1888. That clearly refers to it as being tablets made on an enormous scale by John Wyeth & Brother, of Philadelphia, and Burroughs Wellcome & Co., of London. In 1894 it is altered again. "Burroughs Wellcome & Co., London, are the principal manufacturers of compressed drugs in Europe. Their products are sold under the trade-mark brand of 'tabloid,' an arbitrary coined word." The original obviously refers to their particular productions.

Mr. Walter said there was a lot there that was clearly put in by Burroughs Wellcome & Co.

Mr. Neville: But it shows what is in the books.

Mr. Levett, K.C., now Proceeded to Sum Up

the evidence for the plaintiffs. He first called attention to the evidence which had been given, and said the case divided itself into two branches. The first was that of passing off with letters like "B. W. & Co.," or by a distinct statement that the goods supplied were those of Burroughs Wellcome & Co. The first branch was passing off with knowledge. On that they were at issue. The defendants said they did not do it. The second branch of that subdivision (which was now practically admitted) was that the defendants when asked for tabloids supplied goods which were not of plaintiffs' manufacture.

Mr. Walter: I have offered an undertaking with respect to the first, and do not claim the right to do it.

Mr. Levett said that on the point of trade-mark the registration had been proved, and the admission they had was that goods had been supplied in answer to orders for "tabloids," which was a trade-mark, which were not the goods of Burroughs Wellcome & Co. The three cases of Sykes, Davies, and T. Smith fell within the category of wilful passing off. The other cases fell within the category of what the defendants claimed the right to do. They claimed that if anyone came to their shop and wanted a bottle of cascara tabloids, they could sell anything they liked as long as they were cascara and compressed drugs. Paragraph 5 of the defence said:

> Save as to the sales referred to with H. Sykes, W. B. Davies and T. Smith, the defendants have no knowledge of the sales referred to in such paragraph. But, as they claim the right to sell medical preparations in tabloid form under their ordinary description of "tabloids," they are prepared for the purposes of this action to admit the sales referred to other than the sales to Sykes, Davies, and Smith. The defendants did not supply to Sykes, Davies, or Smith any goods not of the manufacture of the plaintiffs as and for the goods of the plaintiffs. As to Sykes and Davies, both purchasers were in terms informed by defendants' salesmen that the goods supplied to them were not the goods of the plaintiff, but the goods of the defendants. As to the defendant Smith, the order was not in writing, but given verbally, and no mention was made by Smith that the goods of the plaintiffs were required, nor was any written order given for such goods. The defendants admit that the word "tabloid" coupled with the letters "B. & W." or the name "Burroughs & Wellcome" means goods of the plaintiffs. They have not supplied any goods other than the goods of the plaintiffs under orders in which the word "tabloid" is coupled with such letters or name. And they are and always have been ready to give any undertaking not to sell under orders so given any goods other than those of the plaintiffs.

At the present moment the plaintiffs' trade-mark is on the register, and it was admitted the defendants had been selling goods and claiming the right to sell them in answer to orders for "tabloids," which was the plaintiffs' trade-mark. That was a clear infringement of the plaintiffs' right, and unless the motion to remove the plaintiffs' mark from the register succeeded, the action was undefended. He submitted that the evidence proved that "tabloid" was not known before 1884; that it came into knowledge in association with the plaintiffs' goods; that it had never been employed in association with the goods of anyone else; and that so far as the trade was concerned it had a trade signification meaning Burroughs & Wellcome's goods. Under these circumstances he submitted that the plaintiffs were entitled to the relief claimed.

The Defendants' Case.

Wednesday's Hearing.

Mr. A. J. Walter, in opening the case for the defence on Wednesday morning, said that the case presented various aspects. First of all the plaintiffs alleged that they were in possession of certain trade-marks, and in respect of those they sued the defendants for infringement. The plaintiffs also said they had acquired the trade reputation—that was to say that the word "tabloid" meant their goods, and nothing else—and that the defendants had passed off their goods in that way. Then there was the motion on the part of the defendants to rectify the register by the removal of the word "tabloid." First of all one had, in order to see the grounds upon which rectification arose, to see under which Act these marks were registered. As far as he could make out, the plaintiffs admitted they came under the Act of 1883, with an *ad misericordiam* appeal to the Act of 1888. Section 64 of the Act of 1883 provided that a trade-mark must consist of, or at least contain one of the following particulars which applied to this case: "A distinctive device, mark, brand, heading, label, ticket, or fancy word, or words not in common use." That was the section under which this word was registered and must be judged. It had been suggested that a word which had no existence before was necessarily a fancy word within the meaning of the Act. The authorities were absolutely opposed to any such contention. The learned counsel proceeded to cite a number of authorities in support of his contention that the word "tabloid" could not be a word which was either fanciful in its application to the article to which it was applied, or which was obviously or notoriously inappropriate, and which was not descriptive, or which did not suggest description. That, he said, was the test laid down by the cases, and the word "tabloid" reeked with description, and was registered because it did. When one came to consider the history of the plaintiff firm, one found that they had previously endeavoured to do the act which so many cases said trades should not do—map out certain sections of language properly applicable to the descriptions of articles and monopolise them for their own use. "Tabloid" was so descriptive that it had been recognised in no fewer than seven or eight dictionaries, and had been used. If the dictionary had put it in at the moment of its birth, had it any other meaning than that it had as described in the dictionary—"table" *plus* "oid"? It was no good the plaintiffs saying "we taught the public what 'tabloid' meant" The true test was what any ordinary person, having seen the word "tabloid," would think it meant. Could such a person doubt that it had some relation to the nature of a table or tablet? Then they had to consider the word "tabloid" in relation to the goods in respect of which it was registered. "Tabloid" was pregnant with meaning, and that was what the plaintiffs took it for. They had attempted to monopolise for themselves for the same object the word "tablet." They had registered a trade-mark, and had threatened to restrain people from using the word "tablet," and finding that "tablet" was too strong for them they tried "tabloid."

Mr. Justice Byrne: Supposing they took the name "Welloid,' part of their own name.

Mr. Walter: I should have no hesitation in saying it was a fancy word.

Mr. Justice Byrne: I should have heard you argue it meant something to make people well.

Mr. Walter said he did not think so, and went on to argue there was practically no difference between "tabletoid" and "tabloid," because the word "oid" had become in its use in the English language not an additive suffix, but a substitutive suffix, as was instanced by "fungus" not becoming "fungusoid," or "rhombus" not becoming "rhombusoid," but "fungoid" and "rhomboid." To his mind "tabloid" meant merely of the shape of a tablet. The learned counsel then called attention to a number of words which had been disallowed as trade-marks, and asked his Lordship to say that on the authority of these cases "tabloid" trespassed against the Act and could not be registered. The word, he contended, was compounded of words previously known, with known suffixes, having a definite meaning, for it only meant "in the nature of" or "of the shape of." There was no other meaning attributable to "oid," and therefore "tabloid" was a word incapable of registration.

That, said the learned counsel, was the case for rectification of the plaintiffs' trade-mark.

Dealing with the case made against the defendants, he said, as regarded trade-mark, there was no evidence of the infringement of trade-mark apart from the question of passing off. Neither on the label on the goods themselves, by description in writing, or in any other way, had the defendants used the word "tabloid." There was no evidence of infringement of trade-mark at all.

Coming to the next part of the case, namely, the passing off, the learned counsel said the plaintiffs' case was that not the public, but the medical profession, wholesale chemists and retail chemists, knew that the mark "tabloid" meant the goods of Burroughs Wellcome & Co. All their evidence went to that. The *ratio decidendi* on every decided case was protection of the great public, so that the ultimate purchaser who expected to receive the goods of a particular person should not receive goods of another person. The plaintiffs, he submitted, had failed to come up to the standard which was required to make out a case of this description. The plaintiffs introduced "tabloids" to the world by using it purely descriptively, and went on for years telling the public what a "tabloid" was, how convenient it was for putting in the pocket, and how easy it was to administer doses in tabloids; and they said that tabloids were compressed drugs, and they sold tablets and "tabloids" at the same time. Then a change came over the scene. "Tabloid" was in inverted commas, first of all with "Trade-mark" on either side of it. Then it became "Tabloid Products," and "Trade-mark," and letters fulminating thunder at all and sundry. The basis of the case the plaintiffs sought to make out was that the word "tabloid" did not mean a compressed drug, but that it meant the goods of Burroughs & Wellcome. He said it meant nothing of the kind; that it meant to all the public an article and not the goods of Burroughs & Wellcome. When he came to his evidence he should produce over 400 written orders from the public, not one of which was for the goods of Burroughs & Wellcome. He would produce prescription after prescription from doctors ordering tabloids, not one of which were the goods of Burroughs & Wellcome, and he should produce from nearly all his chemists large bundles of orders for tabloids. If any of those druggists who had been called before his lordship had looked through their orders they would have been able to find the same number. He should establish that the word "tabloid" meant nothing to the public except the particular shape of the goods, and nothing else. He should call doctors who would say that they used the word "tabloid" in that sense always, and never intended the goods of Burroughs & Wellcome unless they put "B. & W." The fact that people had not cared to face the wear and tear and expense of a lawsuit was no conclusive evidence of a monopoly of the right. Knowing the size and importance of Burroughs & Wellcome, and knowing that they had an established trade-mark, and that it meant the array of heads of the profession seen in that court, and hoping somebody else would have to pay, they naturally did not care about the expense of attacking such a firm.

Dealing with the Case of Passing off,

the learned counsel said that no claim had ever been made in this case for the use of the word "tabloid" in connection with the letters "B. and W." or "Burroughs Wellcome & Co." The case had not been fought on that point at all. The defendants admitted that the word "tabloid" coupled with the letters "B. W. & Co.," or the name Burroughs Wellcome & Co. meant goods of the plaintiffs and no others. The first case the plaintiffs alleged of passing off was a verbal order on August 13, 1902. They alleged that they verbally ordered "Burroughs, Wellcome & Co.'s cascara sagrada tabloids." They admitted they were told that the goods were in defendants' bottle. It was so long ago that the defendants were unable to give the Court any information—nobody remembered the transaction—no notice was given defendants at the time. They could prove, however, that they had previously sold and were then selling the goods of Burroughs & Wellcome, and among them

(*Continued on page* 902)

stock, fixtures, furniture, and goodwill—for 285*l*. There was an offer in hand for the household furniture and book-debts which was under consideration. The price realised for the business was much in excess of the debtor's estimate of its value. A long discussion took place as to the appointment of a trustee, but eventually the matter was left in the hands of the Official Receiver to wind-up under the order for summary administration made by the Court. The following are some of the creditors:—

	£	s.	d.
Bentley, E., & Son, London	10	0	0
Burgoyne & Co., London	10	0	0
Butcher, W., & Sons, London	19	3	2
Century Bath Company, London... ...	13	14	2
Cooper, L. J., London	10	3	10
Cresswell Brothers, London	20	9	10
Dakin, S., & Co., London	10	0	0
Davis, J. A., London	19	1	10
Gibbs, D. & W. (Limited), London ...	10	1	7
Houghton, G., & Son (Limited), London...	23	5	9

Re Samuel Hurman Longman, 10 Fforchaman Road, Cwmaman, Aberdare, Chemist and Druggist.—In this case, where the deficiency was estimated at 148*l*. odd, the debtor attended for his public examination at the Aberdare Bankruptcy Court on November 23 before the Registrar (Mr. R. Williams), and was examined at considerable length by the Official Receiver (Mr. W. L. Daniel). Debtor said he had been in business about three years, and his assets amounted to 19*l* odd. Previous to starting for himself he had been engaged as assistant, dispenser, and manager at various places, including Hastings, Highbury, and London. Three years ago he carried on a chemist's business at Highbridge, near Bridgwater, but ceased to do so on the occasion of his assigning the business to a trustee for the benefit of creditors. His liabilities then totalled about 600*l*. or 700*l*., and about 4*s*. in the pound was paid, though he believed that if the business had been disposed of as a going concern, instead of being carried on by the trustee, possibly it would have realised sufficient to pay 20*s*. in the pound. Questioned on this point, debtor admitted that he might have paid rather a high price for this business. He had not taken the precaution to see the ledgers or books of account to see what his predecessor's trade was. He only saw a part of the day book and the prescription-book. As a matter of fact he undertook to purchase a business he knew nothing at all about. After leaving Highbridge he had been engaged as an assistant by Messrs. Smith & Co., of Aberdare, at a salary of 60*l*. a year indoors. He, however, left Messrs. Smith & Co. because it "was not comfortable in the house," and in March last he took over the present premises at Fforchaman Road. His knowledge of the district was that which he had been able to gain from his taking walks there on the closing day, and friends had also told him that Cwmaman would be a good place for business, as there was no chemist shop in the district, which comprised a population of about 6,000 inhabitants. His mother had given him 150*l*. to start with, which was placed to his credit at the bank on April 4. He took possession in May, and only carried on business there for about six months, but during that time he had sustained a loss of about 148*l*., or at the rate of 1*l*. per day. By June 30 he had not only exhausted the 150*l*. paid into the bank, but he had overdrawn to the extent of about 11*l*. odd. His accounts showed that he had spent about 9*l*. odd for cab fares. This item debtor explained by saying that he could not find suitable lodgings at Cwmaman, and had to live at the Queen's Hotel, Aberdare. He admitted that he was there paying at the rate of about 45*s*. to 50*s*. a week, whilst he paid for drinks about 2*s*. to 2*s*. a day. He had to engage the cabs to take him to and from business, as the weather was very bad and he was not well. In addition to this he had spent some money on his holidays and drives to Pontneat Vaughan—a popular local resort. During the whole time he had been in business debtor explained that he must have been living on the takings of the business. He only became aware of his insolvency about the end of September, when the bank wrote to him. Previous to that he admitted that he had been careless as to his financial position. The Official Receiver strongly commented on what he characterised as debtor's extravagance in face of the paltry business he was doing, and the fact that this was the second failure within three years, and asked if debtor could give him any explanation. Debtor in effect said he could not. The only books of account which he kept were a ledger with debtors, a poison-book, and a prescription book. From March 10 to October 14 the cash receipts amounted to 260*l*. odd. He averaged his takings at 4*l*. a week. The goods received during the same period came to 175*l*. odd. The Registrar, having remarked that debtor had been reckless and careless, said that there was, nevertheless, nothing to be gained by keeping open the examination, and the examination was closed.

"Aseptic and ascetic" is the new medical motto.

New Companies & Company News.

Holborn Surgical-instrument Company (Limited).—Capital 4,000*l*., in 1*l*. shares. Objects: To acquire the business carried on at 26 Thavies Inn, Holborn, as the Holborn Surgical-instrument Company, and to carry on the business of manufacturers of and dealers in anatomical, orthopædic, and surgical instruments of all kinds, &c. The first directors are: A. Essinger, 20 Carlton Hill, N.W., merchant; M. C. Rimmer, 25 Hillsborough Road, East Dulwich, S.E., merchant; and W. Hartmann, Heidenheim a/b, Würtemburg, manufacturer. Registered office, 26 Thavies Inn, E.C.

James S. Balmer (Limited).—Registered in Dublin. Capital 4,000*l*., in 1*l*. shares. Objects: To carry on the business of pharmaceutical chemists, registered druggists, general storekeepers, grocers, &c. The first subscribers are: James S. Balmer, Main Street, Bangor, druggist; Mrs. A. H. Balmer, Main Street, Bangor; James McFadden, 20 Rosemary Street, Belfast, chartered accountant; J. F. Brice, Tennyson Avenue, Bangor, house agent; F. J. Brice, Main Street, Bangor, clerk; H. C. Smyth, 8 Queen's Parade, Bangor, pharmaceutical chemist; and S. C. Doey, Main Street, Bangor, chemist's assistant. The first directors are J. S. Balmer and Mrs. A. H. Balmer. Qualification, 100*l*. Remuneration of first director, 150*l*. per annum; others to be fixed by the company. Registered office, 101 Main Street, Bangor, co. Down.

Brady & Martin (Limited).—Capital 50,000*l*., in 1*l*. shares. Objects: To adopt an agreement with N. H. Martin, C. E. Stuart, and W. Martin for the acquisition of the business carried on by the said vendors at 29 Mosley Street, Newcastle-on-Tyne, as "Brady & Martin," and to carry on the business of pharmaceutical and analytical chemists, druggists, manufacturers of and dealers in medicinal, chemical, industrial, pharmaceutical, and other preparations, opticians, dealers in photographic, electrical, and scientific apparatus and materials, manufacturers of surgical, dental, and orthopædic appliances, anatomical, surgical, and general bootmakers, perfumers, confectioners, soapmakers, mineral-water and essence manufacturers, &c. The first subscribers are: N. H. Martin, Ravenswood, Low Fell, Durham, pharmaceutical chemist; C. E. Stuart, The Hope, North Avenue, Gosforth, Northumberland, pharmaceutical chemist; W. Martin, M.D., West Villa, Akenside Terrace, Newcastle-on-Tyne; Mrs. S. Stuart, The Hope, North Avenue, Gosforth, Northumberland; Mrs. E. R. Martin, West Villa, Akenside Terrace, Newcastle-on-Tyne; Miss M. V. Martin, Ravenswood, Low Fell, co. Durham; and W. W. Cantrill, 6 Chester Crescent, Newcastle-on-Tyne, chemist. No initial public issue. The number of directors is not to be less than two nor more than five; the first are N. H. Martin (chairman and permanent director), C. E. Stuart, and W. Martin. Qualification 1,000*l*.; remuneration as fixed by the company.

Westminster College of Chemistry and Pharmacy (Limited).—It was decided at the recent annual general meeting to pay a dividend for the past year of 7½ per cent.

Apollinaris and Johannis (Limited).—The directors have declared an interim dividend for the six months ended September 30 last on the ordinary shares at the rate of 5 per cent. per annum.

Messrs. Brady & Martin, Newcastle-on-Tyne, have issued a circular regarding the conversion of their business into a private limited company, as above noted, purely for family and personal reasons. The business will be carried on by the partners, who will continue as directors. It is mentioned that the business was founded in 1855 by Henry Bowman Brady, F.R.S., LL.D. In 1876 N. H. Martin succeeded, and adopted the firm name of Brady & Martin; in 1884 Mr. C. E. Stuart was taken into partnership; in 1898 Dr. William Martin joined the firm, and in 1902 the business of Mr. John Bolam was purchased and amalgamated.

Boots Cash Chemists (Eastern) (Limited).—The profit-and-loss account for the year ended September 30 shows a net trading profit of 22,241*l*.; add balance of profits brought from last year, 7,996*l*.; giving an available total of 30,238*l*., which the directors recommend shall be applied as follows: Confirm dividends already paid, viz.: On preference shares 6 per cent. per annum, 5,760*l*.; on second preference shares 5 per cent. per annum, 2,491; on ordinary shares 12 per cent. per annum, free of income tax, 9,600*l*.—total, 17,851*l*.; carry to contingency fund, 500*l*.; pay management expenses for one year, including managing director's remuneration and directors' fees, free of income-tax, 750*l*.; add to branch managers' (chemists) provident fund, 1,000*l*.; displacement and depreciation of fittings and fixtures, Pelham Street, 2,000*l*.; carry forward to next year, 8,136*l*.

THE "TABLOID" CASE—(*contd. from p.* 890).

cascara sagrada, and that they had always been in the habit of putting up cascara sagrada in their own bottles (which was the usual practice of chemists) which were labelled "Tablets" and "Tabloids." They had about this time also purchased "cascara sagrada" tabloids from Allen & Hanburys, which they put up in bottles labelled "Tablets." The assistant, knowing that Burroughs Wellcome & Co.'s goods had always been sold in this box labelled "Cascara sagrada," believed he had a bottle of these very things bearing defendants' name, "Thompson & Capper," and labelled "Tablets." The defendants bought them in bulk in large bottles containing 500, and they put them up in convenient sizes for the public to buy, and at convenient prices, and labelled them as their goods. Nobody remembered anything about it because there was nothing to call attention to it. The defendants admitted at once if they were supplied they must have been supplied in the mistaken belief by their witness that it was so. Then there was the case of Miss Davies, who took a prescription which had, it was said, on it "B. & W." He should produce the actual prescription-book from which the prescription was made up, and the entry was "Captain James R, Pot. chlor. tab." The gentleman who made that entry said he could not understand why if "B. W. & Co." were there it was not copied. There was also the case of the cascara tabloids "B. & W." about which T. Smith gave evidence That happened on September 12, 1902, and no intimation of any kind was given to the defendants until the issue of the writ in January. His Lordship and other judges had commented in no measured terms on the manner of obtaining evidence of this kind when giving no warning to the defendants until long after the time when the thing had passed from the memory of the people who had to deal with it. As regarded "tabloids," the defendants knew, as every other chemist knew, of the monopoly claim set up by Burroughs & Wellcome. Like all other people, they did not desire law-suits. But when they were trapped—he said it deliberately, trapped—and not warned in any way, they determined to test this question. He should call evidence of user of the word "tabloid" in a sense purely descriptive, having nothing on earth to do with Burroughs Wellcome & Co. Having done that, he should ask his Lordship to say that plaintiffs had not made out their case, and to make an order striking out their trade-marks.

Evidence for the Defence.

Mr. Chas. Kirby Bransby, manager of the defendants' shop at 51 Piccadilly, Manchester, said they also had businesses at Liverpool, Huddersfield, Sheffield, Southport, and Birkenhead. He was a qualified chemist and druggist, and had been with the defendants for 23 years. He produced 80 or 100 orders for tabloids.

Are any of these the goods of Burroughs Wellcome & Co.?—I do not think so.

Does your firm purchase a large number of drugs from the plaintiffs?—Yes.

In what quantities?—In bottles containing 500 tablets.

Messrs. Burroughs & Wellcome put them up in bottles containing 500?—Yes.

How do you retail those goods?—In small bottles of 25 and 50, and so on for convenience, with our label on them, compressed "tablets" of so and so, and our name.

Do you also retail some of Messrs. Burroughs & Wellcome's goods in the small original parcels as sold by them?—Quite a number of them.

In August and September had you in stock any of Burroughs & Wellcome's goods?—Yes.

Cascara sagrada?—Yes.

Tabloids of potassium chlorate, and so on?—Yes.

And you had also purchased goods from Messrs. Allen & Hanbury?—Yes.

How were those goods put up for sale?—In small bottles containing similar numbers to those I have described.

Except when retailing the goods of Burroughs & Wellcome in their original parcels, have you ever placed on any goods in your shop the word "tabloid"?—Never.

Did you know they had registered "tabloid" as a trade-mark?—I knew they claimed it as such.

Have you yourself any knowledge of the matters alleged in the statement of claim?—No.

Witness said the "Capt. James" prescription was copied into the prescription-book by himself. He did not remember seeing the original prescription, and had no recollection of the occurrence. The entry did not contain "B. & W." He produced a number of prescriptions the defendants received from doctors for "tabloids" which were not the goods of Burroughs Wellcome & Co., but for special homœopathic preparations.

How are your special goods verbally ordered over the counter?—Frequently as "tabloids" or "tablets." The public did not seem to make any distinction at all. Most of their "tablets" were, witness went on to say, put up in bottles manufactured by Poths & Co., chemists' sundriesmen, and catalogued as "oval tabloid bottles" and "tabloid or cachou bottles."

Mr. Justice Byrne said the catalogue produced was for 1895.

Cross-examined: He had not noticed whether Poths had used "tabloid" of recent years. He had no information that Poths had been stopped from using it.

You have all along, and your employers, recognised "tabloid" as the trade-mark of the plaintiffs, and refrained from selling any goods but theirs under that name?—Yes.

The orders of your employers have been that nothing was to be served for "tabloids" except the make of Burroughs & Wellcome?—Yes.

Is the bulk of your stock of compressed medicines Burroughs & Wellcomes' or some other stock?—It used to be.

Do you suggest there is a confusion in the mind of the public between "tabloids" and "tablets"?—I should rather think so.

I daresay you feel some pride in having done your best to create that confusion?—Not the slightest.

Don't you think such a course of dealing as you have described is calculated to create confusion?—I do not quite see that it is.

How long have you been in the habit of carrying on this method of trading?—Some years.

Having regard to the fact that the word "tabloid" is the name of Burroughs & Wellcomes' goods, you do not think the practice of selling them under the name of tablets and your firm's name upon them leads to confusion?—No, because whenever we have the tabloids ordered we tell them they are Burroughs & Wellcomes'. We purchased the tabloids or tablets from Messrs. Burroughs & Wellcome in bulk, and bottled them, just the same as we might purchase them from any other firm and bottle them to save confusion in having two stocks, one labelled "tablets" and the other "tabloids." We had the same thing in the bottle, and we could sell them as tablets or tabloids, whichever any one asked for.

Witness was then asked about substitution by supplying somebody else's goods instead of the goods asked for, but said he knew nothing about it except in advertisements of people warning chemists.

How long ago is it since you gave an order for tabloids in bulk to Messrs. Burroughs & Wellcome?—A few days before the writ in this case.

Is your suggestion that in no case have you got alternative medicines to Burroughs & Wellcome's tabloids?—We have now.

Before the action?—I think we had Allen and Hanbury's of one kind.

Witness went on to say that, in the case in defendants' shop there were cascara sagrada tablets and tabloids in bottles, both of them bearing the name tablets and Thompson & Capper's name.

What is to prevent the assistant from handing the tablets instead of tabloids?—He would not do it, except by accident.

But is not that an invitation to accident?—I do not think so. If they were kept close together it might be.

Does this case surprise you?—Very much.

Are we to take it that all the 12 cases we have proved, in which persons who went and asked for tabloids got other goods instead, were all accidents?—I do not know that they have been proved to have been supplied with other goods.

Having regard to your system of trade, would that number of accidents surprise you?—It depends upon the proportion of those cases to the number.

Witness admitted that there was nothing to show cus-

tomers that they got Burroughs & Wellcome's goods except their word. Sometimes people spoke so indistinctly that it was difficult to tell whether they said "tabloids" or "tablets." Customers had to trust to their honour whether they were getting tabloids or tablets. With regard to his copying the "Captain James" prescription, he said there was no object in putting "B. W. & Co.," because "tabloid" to his mind meant the same thing as "Tabloid, B W & Co."

In either case you knew it was a fraud to pass off any other goods instead of the goods of Burroughs, Wellcome & Co.?—Yes.

The people in the shop knew perfectly well what "tabloids" meant?—Yes.

Mr. John Rymer Young, pharmaceutical chemist, Warrington, a member of the Council of the Pharmaceutical Society, said he had had thirty years' experience. They sometimes had things ordered as tabloids which Burroughs & Wellcome did not make, but things as to which they knew what the doctor meant. They then dispensed the article the doctor meant. Witness instanced antikamnia and ammonol. In his experience the public used "tabloid" and "tablet" quite indiscriminately.

Mr. Chas. Thurstan Holland, M.R.C.S., L.R.C.P., in practice for fourteen years at Liverpool, said that prior to learning that "tabloid" was Burroughs & Wellcome's trade-mark, two years ago, he used that term only to describe the form in which the drug or drugs were to be put up. He believed his patients understood the word in the same sense. If he wanted Burroughs & Wellcome's goods he always put "B. W. & Co."

Dr. Chas. W. Hayward, M.D., said patients used the word "tabloid" to describe a dose of medicine put up in an improved form of an old pill. He did not find in his practice that the term was used as indicating the goods of a particular firm. The bulk of their medicines were made up in tablet form, and these forms were known by the patients and asked for as "tabloids."

How do you use the term "tabloids"?—I should call all drugs made up in that shape tabloids undiscriminately, whether they were made by Burroughs Wellcome & Co. or not.

Witness said he did not know one of his brother professionals who restricted "tabloid" to the products of one firm.

In cross-examination witness said he knew tabloid was Burroughs and Wellcome's name, but he never thought such a name could be on the register. He only knew recently they had the exclusive right to it.

Re-examined: He had constantly used tabloids to describe the goods of other people.

The hearing was adjourned until Thursday.

Tabloids and "Tabloids" Evidence.

Thursday's Hearing.

The hearing was resumed on Thursday morning, when the first witness was Dr. James Watson, 32 Prince's Road, Liverpool, who said that since 1897 he had made up "tabloids" of unmedicated vehicles for his patients. He produced specimens of the labels he used. His practice was entirely homœopathic, and his vehicles labelled "tabloids" had been largely distributed. He understood by the term "tabloid" a medicine put up in a compressed form, and in a shape resembling a flat round table.

What distinction do you draw between "tabloid" and "tablet"? I think a tablet is flatter in shape; but from my experience of chemists and patients I thing they are used as interchangeable terms.

Witness first heard of the plaintiffs' claim to the exclusive use of the word "tabloid" about 18 months ago. As far as he knew, the understanding of his brother "medicos" was similar to his. He had given orders to Mr. Anthony Buck, one of the plaintiffs' witnesses, for Parke, Davis & Co.'s hypodermic tabloids. They were supplied without any question, as a matter of course.

Cross-examined: Witness stated that before he took his degree he had seen "tabloid" in connection with Burroughs & Wellcome. That was his first acquaintance with the word.

Dr. William Reid, Prince's Avenue, Liverpool, said he had known the word tabloid for many years, and always understood it to imply compressed drugs of a certain shape or form. Until comparatively recently he never knew the word associated with the firm of Burroughs Wellcome & Co. In prescribing he used the word tabloid without meaning the goods of any particular firm. His patients and chemists he knew used the word in the same sense as he had, without reference to the maker.

Cross-examined: He knew later on that plaintiffs claimed an exclusive right to the term "tabloid." So far as he knew, Burroughs & Wellcome were the only makers of tabloids, though he had ordered goods in "tabloid" form.

Mr. H. W. K. Pears, manufacturing chemist, Hove, said he advertised his goods largely as "tablets." He produced over 400 orders for his goods under the name of "tabloids." The orders came from all parts of Great Britain, the Colonies, and India. Many of the orders gave the name of the periodicals in which the persons writing had seen his advertisements of tablets. Kilner Brothers, Limited, listed "tabloid" bottles in 1902. Many makers of bottles had volunteered to supply him with tabloid bottles.

Cross-examined; He was a manufacturer of compressed drugs, for which there was a great demand. He advertised to the public as well as the trade.

Do you ever sell any article other than Burroughs & Wellcome's under the name "tabloid"?—Not unless I have reason to believe they mean my preparations. In nearly every case they say "your tabloids." I have never put forth my goods as "tabloids."

Witness said when he issued one of his advertisements he thought that "tabloid" was a coined word, but at that time he did not think it was capable of registration. He wanted a suggested word which would be capable of registration as short as "tabloid."

Witness went on to say that when a word became of general use it was of no use as a trade-mark. No respectable manufacturer or chemist would sell "tabloids" except Burroughs & Wellcome's when Burroughs & Wellcome's were ordered. He sold his own goods as "tabloids" when he knew his own goods were meant, but he never labelled his goods as such. It was a matter of vital importance to Mr. Wellcome to retain the trade-mark, but it was of less importance to the public. The orders he produced were for his goods under the name of "tabloids," though he never invoiced them as such. The public thought that all compressed tablets were tabloids. He had sent letters to customers saying that another firm claimed the exclusive right to the word "tabloid," but he sent his goods because they obviously intended his goods. In this way the customers knew what they were getting, and he protected himself. If chemists could substitute another manufacturer's goods for Burroughs & Wellcome's they would make a great profit. One of his advertisements was to the effect that on some of his goods the chemists could make a profit of 250 per cent.

"May I ask," said the witness, "whether you call that an enormous profit?"

Mr. Neville said it was more than they could make on Burroughs & Wellcome's.

Witness said that chemists naturally bought unbranded goods as much as they could because of making a larger profit, the trade in branded and proprietary goods being so much cut.

Re-examined: The bulk of goods sold by chemists were made up for them.

Mr. Michael Carteighe,

of Bond Street, said he had had upwards of forty years' experience, and was a Past-President of the Pharmaceutical Society. In his opinion the public regarded the words "tabloid" and "tablet" as synonymous, and meaning a flattish compressed drug. Medical men as a whole did not take the trouble to distinguish between tablets and tabloids. He had had cases of goods ordered as tabloids which were not put up by the plaintiffs.

Cross-examined: He believed Burroughs used to sell tabloids in bulk. He was not sure the public knew that "tabloids" was the exclusive word of Burroughs Wellcome & Co. They were getting better educated. He associated with medical men, and the opinion he formed was that many of them did not know that "tabloid" was the trade-mark of the plaintiffs.

Mr. Blaine, manager of the retail and dispensing depart-

ment of Messrs. Woolley, Sons & Co., of Manchester, said he could not say the public used the term tabloid to mean any special make of goods. Witness's firm often had large quantities of compressed goods ordered under the name "tabloid." Medical men in prescriptions used the word tablet and tabloid indiscriminately. Witness produced several copies of prescriptions in which the word "tabloid" was used in reference to goods not supplied by Burroughs Wellcome & Co.

In cross-examination witness said his firm on the average made up 100 prescriptions a day.

Mr. T. F. Abraham, of the firm of Clay & Abraham, chemists, of Liverpool, said that Burroughs Wellcome & Co. threatened proceedings against them in connection with the word "tablet."

I think you told them to go on?—Yes.

They did not?—No.

Witness said the public used the term "tabloid" to mean a tablet in the majority of cases. Doctors did not attach importance to the word "tabloid" except as a compressed drug. He had inquired what doctors meant by "tabloids," and that was the almost invariable answer. He had asked customers what they meant by "tabloid"; as a rule they had not the slightest idea—they wanted a tablet. He also produced a number of orders and prescriptions.

Cross-examined: He had never objected to the exclusive right of the plaintiffs to the word tabloid. He had something better to do.

Mr. John Bain, chemist, Liverpool, said people often asked for his "ammoniated quinine tablets" as "tabloids." The public used the word "tabloids" very indiscriminately. He had known customers come in and ask for tablets and pick out a bottle of his "tablets" and say "that is what I want." He produced a number of orders, one of which was for Burroughs & Wellcome's goods as "tablets." The manufacturers of the bottles for their tablets described the bottles on the box as "tabloid bottles."

Cross-examined: He knew "tabloid" was the trade-mark of Burroughs Wellcome & Co. He never communicated with the makers of the bottles. He had never knowingly sold tabloids other than Burroughs & Wellcome's, but a little experience of his own made him doubt whether that word was a good trade-mark. The cascara tablets they sold were bought in bottles ready labelled. He had taken exception to the labels supplied some time ago because they were so similar to those of the plaintiffs, and would not have any more of them.

Mr. Foster, chemist and druggist, of Scarborough, said he frequently had orders for goods under the term "tabloid" for goods not those of Messrs. Burroughs & Wellcome. These were ordered as "tablets" or "tabloids" quite indiscriminately.

Witness went on to say that he also was threatened by the plaintiffs with proceedings in connection with the word tablet. Burroughs & Wellcome did not proceed—they collapsed.

Cross-examined: This was in 1887. He has never asserted the right to use the word "tabloid" and never had used it. They got orders for uncompressed drugs as tabloids just the same as for compressed drugs.

Mr. R. Hazlewood Jones, chemist, Herne Hill, said that whilst he was a traveller he called on about 800 doctors four times a year. He carried tablets with him. Almost invariably medical men applied the terms "tablet" or "tabloid" indiscriminately to any form of compressed drugs. It was a daily occurrence for doctors to take up a bottle of tablets and say "Send me a bottle of these 'tabloids.'" Again and again he had orders for "tabloids" which were not the goods of the plaintiffs.

Cross-examined: The 800 doctors were in the North and Midlands of England. In some cases he pointed out that "tabloid" was the trade-mark of Burroughs & Wellcome and asked if they meant Burroughs & Wellcome's make. The doctors in 90 per cent. of the cases said they did not want Burroughs & Wellcome's goods. They did not want to pay the price. His list was not a list of doctors who wanted to buy drugs cheap—they were the heads of the profession in the district in which he travelled. He was selling "tablets," and was carrying samples labelled "compressed tablets." In his view "tabella" meant a compressed drug. Witness went on to say he took orders in 90 per cent. of cases, but he tired of travelling in three years.

Mr. Neville: I am surprised. (Laughter.)

Re-examined: The doctors required the goods you were travelling in?—Yes.

Was there any attempt on your part to obtain orders for goods under the name of "tabloids"?—Certainly not.

You came to give evidence as to how your goods were described by the doctors you called on?—Yes; and for no other purpose.

What was the description by which the doctors in ninety cases out of one hundred knew them to be yours?—"Tabloids."

Is there any ground for the suggestion that you attempted to pass off your goods as "tabloids"?—No; the suggestion is one of the privileges of counsel. (Laughter.)

Mr. Neville: I never made any such suggestion.

In answer to his Lordship, witness said he travelled for Messrs. Brady & Martin, of Newcastle. When once the word "tabloid" got into use, his opinion was that doctors and the public adopted it because it was more attractive and euphonious than "tablet."

Mr. Firmin, manager of the retail department of Messrs. Gould & Co., homœopathic chemists, Moorgate Street, gave evidence to the effect that homœopathic compressed drugs are described indiscriminately as "tablets" or "tabloids."

In answer to the learned Judge, witness said that the word "tabloid" seemed to have grown up with him.

Mr. Walter then informed his Lordship that he could go on calling witnesses to Christmas, but in mercy to the Court he would not do so.

Mr. Justice Byrne: How many of these are not homœopathic?

Mr. Walter said not many of them.

Mr. Neville said he could not make any admissions as to what other witnesses would say.

Mr. Walter said he had exercised his discretion and called witnesses from various parts of the country. He could go on calling men for a week.

Mr. Neville said he would not admit that.

Counsel then proceeded to address the Court.

Mr. Walter gave a forcible address, and was followed by Mr. Neville, who had not concluded when the Court adjourned. It is expected that Mr. Neville will finish on Friday, and that Mr. Justice Byrne will reserve judgment.

Toxic Properties of Quillaia.

Dr. E. Berdoe, Tynemouth House, Victoria Park Gate, E., writes:

A lecture was delivered this week before the Therapeutical Society at Apothecaries' Hall by Dr. R. B. Wild on "The Pharmacology of the Saponins," in the course of which the lecturer demonstrated the fact that quillaia-bark possesses extremely powerful toxic effects on the heart. So readily is the effect produced by the weakest solutions of this drug on the excised heart of the frog, a quantity as minute as one part of sapotoxin in 100,000 of water can be detected by the physiological test. Dr. Wild rather startled his audience by informing it that some dispensers are in the habit of using tincture of quillaia in place of mucilage in bismuth-mixtures, and that in consequence the prescriber sometimes finds the mixture produces gastric irritation, instead of allaying it. The meeting at once recognised a possible danger in this reprehensible practice, if it really exists, as we were assured it does. It was also stated that quillaia is employed in emulsifying oils, such as cod-liver oil preparations. My object in asking you, Sir, to publish this note is that pharmacists may be made aware of the potency of this drug on the heart muscle, and if it be the fact that both in medicines for internal exhibition and in articles of food this dangerous drug finds a place, those who are responsible for its use may be made aware of the risk they run.

Quillaia and senega are used to some extent for emulsifying oils, but never, to our knowledge, for the suspension of bismuth salts in mixtures. No saponin preparation should ever be added to a physician's prescription without his sanction. We are obliged to Dr. Berdoe for bringing this matter so forcibly before our readers.

THE cultivation of pepper has been largely extended in Sarawak Borneo, and the planters (mostly Chinese), have done exceedingly well owing to the good prices that have been ruling for the past few years.