
Upendra Nath Brahmachari and Others Vs The Union Drug Co., Ltd.

None

Court: Calcutta High Court

Date of Decision: March 22, 1926

Citation: AIR 1926 Cal 837 : 95 Ind. Cas. 667

Hon'ble Judges: C. C. Ghose, J

Bench: Single Bench

Judgement

1. This is a Rule granted by my learned brother Mr. Justice Gregory calling upon the defendant Company to show cause why an injunction should

not be awarded against them restraining them, their servants and agents, until the determination of this suit, from using the name ""Urea Stibamine

and selling an antimony compound manufactured by them under the said name, and from selling or offering or exposing or advertising for sale or

procuring to be sold the said compound, under the name of ""Urea Stibamine"" or with a get-up calculated and likely to deceive the public into

thinking that the said compound is of the manufacture of the said plaintiff, Upendranath Brahmachari, or from in any manner passing off their goods

as those of the plaintiffs. This Rule came on for hearing before me on the 15th, 16th and 17th days of March, when after hearing Counsel on both

sides reserved judgment until this morning.

2. The facts giving rise to the present litigation and to the application on which the present Rule was issued as far as I can make out from the

affidavit with their annexures used before me and from what has been opened before me by learned Counsel on both sides are shortly stated as

follows: The plaintiff Dr. Upendranath Brahmachari who is a well-known and distinguished medical practitioner in Calcutta, has since 1913 been

engaged in researches for discovering a cure for Kalaazar. The introduction of a successful treatment for Kala-azar is a matter of the first

importance to the Province of Assam and Bengal: where Kala-azar is largely prevalent, and it is said that Dr. Brahmachari discovered in 1921 an

antimony compound for the treatment of Kala-azar. It appears that the Firm of Von Heyden of Dresden had previously prepared and placed on

the market an aromatic compound of antimony, namely, sodium para-acetyl-amino-phenyl stibiate. This compound had first been used in Italy by

Caronia (1916) and later by Spagnolio (1920). Their results had been promising but by no means absolutely convincing. It was tried in England by

Manson-Bahr who used it in one case of Kala-azar and reported favourably on it. In the same year Mackie (1921) obtained supplies of this

compound from Messrs. Allen and Hanbury's Ltd., through whom it had been placed on the market under the trade name of ""Stibenyli"" The

results, however, were not encouraging: it was about this time (1921) that Dr. Brahmachari, who as stated above had been working for some time

past on the antimony compounds, produced and tested, a number of aromatic compounds of antimony and with some of them he obtained good

results: he reported that with the compound which he had named ""Urea Stibamine"" his results were exceptionally good.

3. He treated a number of cases with this substance in 1921 and reported the results of the treatment of eight cases in the Indian Journal of

Medical Research, edited among others by the Director-General, Indian Medical Service, for October 1922. About the beginning of the year

1923 Dr. Brahmachari arranged to produce ""Urea Stibamine"" on a large scale and was able to supply it to other workers for trial. Major Short,

who is a member of the Kala-azar Commission, tried it in a number of cases in Shillong and reported very favourably. Other workers whose letters

are set but as annexures to the petition of Dr. Brahmachari, gave to this new cure ""Urea Stibamine"" an extensive trial and reported favourably on

this particular, antimony compound. It was now (1923-24). quite clear that a number of cases of Kala-azar that had been treated with ""Urea

Stibarmine"" were recovering much more rapidly and with less treatment than would have been necessary had they been treated with antimony

tartrates. Dr. Brahmachari states that he invented and coined the name of ""Urea Stibamine"" for the purposes of his business of manufacture and

sale of the said antimony compound and has all along used the name. He states farther that the antimony compound manufactured and sold by him

is well known to the public generally by the name of ""Urea Stibamine"" and is indeed asked for by the public under that name. He states also that

the-said name of ""Urea Stibamine"" used in connexion with the said antimony compound for the treatment of Kala-azar is always understood by the

public generally to mean and refer to the antimony compound manufactured and sold by him. Since 1923 Messrs. Bathgate and Co. have been

and are acting as sole distributors in the market of Dr. Brahmachari's antimony compound for the treatment of Kala-azar. Mr. Lunan, who is a

partner in the Firm of Messrs. Bathgate & Co., states as follows: ""That I say that the plaintiff's aforesaid antimony compound has an extensive sale

in and outside Bengal and has acquired a great reputation in the market and it is well-known under the name of ""Urea Stibamine"" and is asked for

by the public under the said name. That I say that as sole distributor in the market of the plaintiff's antimony compound I have since 1913 been and

am still receiving orders from all parts of India for the supply of the plaintiffs' antimony compound. In all such orders the words "Urea Stibamine"

are used and I say that in the market the words "Urea Stibamine" have come to mean the antimony compound manufactured and sold by the

plaintiff Upendra Nath Brahmachari.

4. It appears that Dr. Brahmachari submitted in 1920 an application to the Indian Research Fund Association for a grant-in-aid to enable him to

continue his research work and that as a result of his application he received a certain amount of financial assistance from the said Association on

the understanding that he would publish the results of his researches in the Indian Journal of Medical Research. This is clear from Dr.

Brahmachari's affidavit of the March 8, 1926 and from a copy of a letter, dated February 27, 1926 from the Secretary of the Governing Body of

the Indian Research Fund Association to the address of the defendant Company set out in the affidavit of Hari Pada Bhattacharji of the March 2,

1926. As indicated above, Dr. Brahmachari published the results of his researches in the said Journal in October 1922. Further papers embodying

the results of his later researches were also published by him in October 1924 and July 1925 in the said Journal. These papers are all annexed to

the affidavit of Haripada Bhattacharji and they indicate clearly as far as one can make out that the pentavalent antimony compound known as

Urea Stibamine"" has come to stay. Dr. Brahmachari's formula for ""Urea Stibamine"" is set out on page, 508 of the Indian Journal of. Medical

Research for October 1922. He states (I am obliged to refer to these matters for reasons which will be apparent later on) that the starting material

in the preparation of the antimony compound known as ""Urea Stibamine"" is acetyl-p-amino-phenyl-stibinic acid. The Sodium Salt of this

compound is sometimes known as stibacetin. Derivatives of this compound were prepared allied to those of parosanilic acid. Dr. Brahmachari goes

on to add as follows: ""Acetyl-p-amin phenyl stibinic acid, $\text{CH}_3\text{CONH} \cdot \text{C}_6\text{H}_4 \text{ SbO} \cdot (\text{OH})_2$ was prepared in my laboratory by the action of

sodium antimonite upon diazo-solution in a way somewhat analogous to Bart's reaction. By diluting the sodium antimonite solution it was found

that the yield was greater than that obtained by following the method described in Morgan's work on Organic Compounds of Arsenic and

Antimony, which is the method of Von Heyden. This compound yields on hydrolysis 4-amino-phenyl-stibinic acid. The sodium salt of this acid is

the antimony analogue of atoxyl. For the sake of simplicity I have called this sodium salt

OH

$\text{NH}_2\text{C}_6\text{H}_3\text{SbO}$

Ona.

Stibamine"" from its analogy to the corresponding salt of arsenic which is also known as arsamine. Stibamine as prepared in my laboratory is an

amorphous powder fairly soluble in water. Its solution must be perfectly neutral. The presence of alkali or acid in its solution helps its

decomposition. The solution should be freshly prepared immediately before use. Composition:

5. Calculated for $C_6H_7O_3NSb Na$. Sb=42.25% N=9.3%. Found Sb=42.10%, N=4.88%.

(1) Urea-stibamine.

6. $Co (NH_3)_2 \cdot H_2NC_6H_4 SbO \cdot (OH)_2$.

7. This is carbamide salt of p-amino phenyl-Stibinic acid.

8. S. P. The word ""Stibamine"" by itself does not and cannot indicate to any student of chemistry the presence of phenyl and sodium in the

composition of the compound called by that name: but as will be seen from the above Dr. Brahmachari's contention is (and it will be apparent to

every one who is familiar with atomic symbols) that in what is called by him ""stibamine"", there is sodium which is represented by the symbol Na but

when ""Urea Stibamine"", i.e., the compound which Dr. Brahmachari claims as a cure for Kala-azar, is produced, sodium does not enter into its

composition. Dr. Brahmachari, therefore, claims that ""Urea Stibamine"" is an altogether fancy word like ""Arsamin"" or ""Soamine."" The word ""Urea

is of course a well-known chemical term. Stedman in his Medical Dictionary (8th Edition, 1925) states that ""Urea is formed in muscle but chiefly in

the liver and is thought to be derived from ammonium carbonate by the successive loss of two molecules of water, the intervening product being

ammonium carbamate. It may be obtained artificially by heating a solution of ammonium cyanate."" Its chemical name is Carbamide and the formula

is CH_4N_2O or $CO(NH_2)_2$. But it is said that there is no substance known in the chemistry of synthetic drugs as ""Urea Stibamine."" This is clear

from Gilbert Morgan's ""Organic Compounds of Arsenic and Antimony,"" May's ""Chemistry of Synthetic Drugs"" and Stedman's Medical

Dictionary. There is, however, a chemical name for the compound represented by the formula $CO(NH_2)_2 \cdot 2H_2NC_6H_4 SbO \cdot (OH)_2$ and that is, as

far as I can make out, urea-p-amino phenyl-stibinate or carbamide-p-amino phenylstibinate.

9. To sum up, Dr. Brahmachari's point is that although he has given the formula to the world for the preparation of this particular antimony

compound which is claimed by him as a cure for Kala-azar, he has given to this antimony compound a name which is not descriptive of the

compound but which is a fancy word made up of two words "urea" and "stibamine," the word "stibamine" signifying by itself something which

does not enter into the composition of the antimony compound known as ""Urea Stibamine.

10. Dr. Brahmachari states that the defendant Company was incorporated in or about March 1925 and that about the middle of 1925 the

defendant Company started manufacturing an antimony compound to which they gave the name of ""Aminostiburea."" Its chemical name was stated

by the defendant Company to be para-amino-phenyl-stibinic acid-urea and glucose and they claimed it as a stable compound of stibinic acid, urea

and glucose for the treatment of Kala-azar. Dr. Brahmachari, while not making any complaint on this head, points out that the name Aminostiburea

is only a variant of ""Urea Stibamine."" but, be that as it may, it appears that on the 23rd December 1925, the defendant Company wrote to the

Director of the Calcutta School of Tropical Medicine and Hygiene in which they enquired whether they could use the name ""Urea Stibamine"" in

respect of an article manufactured according to the formula of Dr. Brahmachari. Dr. Brahmachari states that the letter in question was forwarded to

him by the Secretary, Indian Research Fund Association, for an expression of his opinion and that he immediately objected to the defendant

Company using the name ""Urea Stibamine."" On January 20, 1926, the defendant Company inserted an advertisement in the Statesman newspaper

in which they stated that they had been authorised to manufacture ""Urea Stibamine"" for District Boards, hospitals and other public Health Centres,

and that in manufacturing ""Urea Stibamine"" they followed the process of Dr. Brahmachari as published: in the Indian Journal of Medical Research.

It is not clear from the advertisement as to who had authorised the defendant Company to manufacture ""Urea Stibamine."" Dr. Brahmachari states

that he had never authorised the defendant Company to manufacture the antimony compound referred to above under the name of ""Urea

Stibamine."" In February 1926 the defendant Company put their manufactured article on the market under the name of ""Urea Stiba mine"" and on

the February 23, the plaint herein was filed and the present Rule obtained from this Court.

11. As stated above, Dr. Brahmachari's contention is that since the beginning of 1923 he has manufactured "" Urea Stibamined and sold the same

through. Messrs. Bathgate and Co. on a large scale under a particular get-up which is described in para. 7 of his petition. He claims that his get-up

is quite distinctive and well-known to the public in connection with the anti(sic) compound manufactured by him and claimed as a cure for Kala-

azar. He urges that the defendant Company have no right whatsoever to manufacture and offer for sale an antimony compound under the name of

Urea Stibamine"" and that they have no right to use a get-up which is calculated likely to deceive the public into thinking that the compound of the

defendant Company is of the manufacture of Dr. Brahmachari. Mr. Lunan of Messrs. Bathgate and Co. supports Dr. Brahmachari and states

further as follows:---That ""the defendant Company are selling or causing to be sold antimony compound under the aforesaid name, packing and

get-up at a much lower price, and the public are induced to purchase the same in the belief that they are purchasing the antimony compound

manufactured by the plaintiff Upendra Nath Brahmachari at a lower rate than they would get from my firm Messrs. Bathgate and Co., I say that

some of my customers have cancelled their orders on that ground and I annex hereto the original invoice returned by Messrs. D. Waldie and Co.,

with the note thereon and a post card written to us by Jogesh Chandra Lahiri intimating cancellation of his order. The said invoice and the said post

card are hereto annexed and marked with the letter D.

12. It is unnecessary for me to go through the other affidavits produced by Dr. Brahmachari and used on his behalf when the present Rule was

obtained. A large number of the deponents are medical practitioners and they state that the antimony compound manufactured under the name of

Urea Stibamine"" by and under the supervision of Dr. Brahmachari has acquired an extremely good reputation for the treatment of Kala-azar cases

and that whenever they prescribed ""Urea Stibamine"" they meant and intended to refer to the antimony compound manufactured under the name of

Urea Stibamine"" by and under the supervision of Dr. Brahmachari.

13. In opposition to the present Rule the defendant Company have produced before me an equally large number of affidavits. One of the

deponents, namely, Hari Pada Bhattacharjee, states that as a result of the research work of a number of gentlemen in collaboration with Dr.

Brahmachari an antimony compound, was ""prepared which was given the name of ""Urea Stibamine"" and that the scientific description of this

compound is an urea derivative of para-amino-phenyl-stibinic acid (see para. 5 of the affidavit). He states further as follows: ""I deny that the

plaintiff Upendranath Brahmachari invented the name for the purpose of his business and I say that the name was intended to designate a

compound which it was intended to use for the treatment of Kala-azar. ""I deny that the name "Urea Stibamine" is understood by the public

generally or at all to mean or refer to the antimony compound manufactured and sold by the plaintiff Upendranath Brahmachari or by any one

particular person. I say that it is understood to denote the antimony compound itself."" ""The deponent then goes on to deny that the get-up of the

defendant Company is a colourable imitation of the plaintiff's get-up or that the defendant Company has at any time passed off or caused to be

passed off the antimony compound prepared and sold"" by them as and for the antimony compound manufactured by the plaintiff. Hari Pada

Bhattacharji is supported by a large number of medical practitioners who state, among other things that the carton used by the defendant Company

is the usual and standard packing for single ampoules. The affidavits are more or less on the same lines and it will be sufficient if I quote two of the

material paragraphs from one of these affidavits, and they are as follows: ""In prescribing Urea Stibamine for my patients I have always intended to

refer to that particular pharmaceutical preparation of antimony and not to a compound as manufactured or prepared by any one particular person.

As far as I know the name Urea Stibamine implies to the medical profession the aforesaid antimony compound of which the formula and process

of preparation is known and does not imply a compound manufactured by any one particular person.

14. In addition to the above body of evidence my attention has been drawn to the affidavits in reply, the object of which is to bring out, among

other things, that the action of the defendant Company in manufacturing and selling an antimony compound under the name of Urea Stibamine has

created and is likely to create confusion, and that the cartons and packing of the defendant Company's article are so similar to those of the

plaintiffs" that, it is not possible even for doctors and chemists, let alone illiterate persons, to find out the difference in the get-up of the two articles

except upon a careful and minute examination. It is also alleged that the present capital of the defendant Company will not exceed Rs. 20,000 and

that the plaintiffs would be put to irreparable loss unless this Rule is made absolute.

15. I was prepared to allow the parties to go to trial immediately the plaintiffs were willing to go to trial at once but the defendant Company

through their Counsel intimated to me that they would have to collect evidence from such distant places as Delhi and Simla and that in the

circumstances it would not be convenient to them to have an immediate trial of this case.

16. On behalf of the defendant Company it has been contended before me that Dr. Brahmachari can have no monopoly in the name ""Urea

Stibamine,"" and further that if there is a name indicating an article, as opposed to a fancy word descriptive of the manufacture by one of a particular

class of articles unless it can be protected by a patent or unless it is manufactured by a secret process, no relief can be given to the plaintiff. In

other words, it is contended that as soon as the patent expires or the secret process becomes known to the public, the protection whatever it was

goes. It is, therefore, argued that a man in the position of Dr. Brahmachari, who has published to the whole world his formula for making the

antimony compound known as Urea Stibamine, cannot be in a better position than the man whose patent has expired or whose secret recipe

becomes known. Mr. Langford James who appeared for the defendant Company has in support of his above contentions drawn my attention to a

large number of decided cases in England and has contended that inasmuch as Urea Stibamine is a descriptive word, Dr. Brahmachari cannot be

allowed to enclose and appropriate as his private property certain little strips of the great open common of the English language and that this is a

kind of trespass against which the Courts ought to set their faces. [See the remarks of Fry, L. J. In re Dunn's Trade Marks (1889) 41 Ch. 439 :

58 L. J. Ch. 604 : 61 L.T. 98]. Mr. James further pointed out that the plaintiff's case is more or less like the Linoleum Manufacturing Co. v. Nairn

(1878) 7 Ch. D. 834 : 47 L.J. Ch. 430 : 38 L.T. 448 : 26 W.R. 463 where Fry, J., found as a fact that the word Linoleum which had been taken

by the defendants in that case was not an essential part of the plaintiff's trade mark, but was descriptive only. (sic) J. observed as follows in that

case: ""In my opinion, it would be extremely difficult for a person who has been by right of some monopoly the sole manufacturer of a new article,

and has given a new name to the new article, meaning that new article and nothing more, to claim that the name is to be attributed to his

manufacture alone after his competitors are at liberty to make the same article."" Mr. James cited other cases on the same line and in particular he

drew my attention to the case of the Cellular Clothing Co. v. Maxton & Murray (1899) A.C. 326 : 68 L.J.P.C. 72 : 80 L.T. 809 : 16 R.P.C. 397

and of In re, Chesebrough's TradeMark ""Vaseline"" (1902) 2 Ch. 1 : 71 L. J. Ch. 427 : 86 L.T. 665 : 18 T.L.R. 468 : 10 R.P.C. 342.

17. On behalf of Dr. Brahmachari Sir Binod Mitter and Mr. Sircar have contended that in all the cases cited by Mr. James the names, of the

articles in question were all descriptive of the articles manufactured but in the present case the name in question namely, Urea Stibamine, is not

descriptive of the article at all and has indeed no chemical meaning and will not convey any meaning whatsoever to any student of organic

chemistry. They argued that by the word Urea Stibamine the presence of phenyl and the absence of sodium are not indicated in the compound and

they contended on the affidavit used before me, and indeed on the evidence of Hari Pada Bhattacharji, that the scientific name of the antimoney

compound prepared by Dr. Brahmachari for the treatment of Kala-azar is Carbamide or Urea para-amino-phenyl-stibinate, and that the name

Urea Stibamine was in the circumstances set out above and having regard to the chemical composition of this particular compound a purely fancy

or invented word like many other words such as Stibanyl, Stibosan, Aminostiburea and Stibumine Glucoside. (See in this connection a list of trade

names of synthetic drugs with their chemical formula and their scientific names of page 677 of Martin's Industrial Chemistry (Organic), 6th edition,

1922), Sir Binode Mitter's contention, therefore, was this:---That if the article is denoted by a descriptive name and that name only, there cannot

be any monopoly whatsoever so far as the name is concerned. If, however, the article can be denoted by a proper descriptive name, but the

person inventing or discovering it chooses to describe the article by a fancy name and manufactures and sells the same under that fancy name, no

one is allowed to appropriate that name and manufacture and sell the article in question under that fancy name. In other words, Sir Binode's

contention was that whereas here you have a proper scientific compound which has been found by Dr. Brahmachari to be efficacious in Kala-azar

cases, but which compound Dr. Brahmachari has not chosen to call by and under its proper scientific and descriptive name, but has chosen to

call it by the name of Urea, Stibamine which to the student of chemistry does not connote by itself any chemical substance discovered up-to-date

in the region of biochemistry and which name by itself does not enable any student of chemistry to find out the chemical formula set out on page

508 of the Indian Journal of Medical Research for October 1922, he is entitled to the relief he seeks. Mr. Sircar has shown by reference to Gilbert

Morgan's book that you can have an infinite number of aromatic antimonials but it is impossible to construct a chemical formula for Urea Stibamine

unless the student knew the proper scientific name of this particular antimony compound. In these circumstances learned Counsel for the plaintiff

contended that the plaintiffs have brought their case within the four corners of the case, of Barlow and Jones v. Jabez Johnson and, Co. 7 R.P.C.

395. This was a case, relating to the trade mark ""Osman"" of Barlow and Jones for an improved Turkish towel. The manufacture of the improved

towel was from the first open to the whole trade, and the evidence proved, in the judgment of Chitty, J., and of the Court of Appeal, that amongst

persons in the trade, to whom alone as a rule the name ""Osman"" had penetrated, it was understood to distinguish the articles as being of the

manufacture of the firm claiming it as a trade mark, and not of any other traders. Reliance was also placed on behalf of the plaintiffs on the speech

of Lord Herschell in the case of Reddaway v. Banham (1896) A. C. 199 : 65 L.J.Q.B. 381 : 74 L.T. 289 : 44 W.R. 638. On the merits it was

strongly urged on behalf of the plaintiffs that there was bad faith on the part of the defendant Company and that they having thought that the word

Urea Stibamine was attractive, they proceeded to see, to use a familiar expression, money in the word and to appropriate the word. It was made

clear before me that Dr. Brahmachari has no objection whatsoever to anybody preparing an antimony compound for treatment in Kala-azar cases

according to his formula: but it was argued that inasmuch as Dr. Brahmachari has built up a large business due to the fact that the word Urea

Stibamine has by (sic)trated into the market as denoting the particular antimony compound manufactured by Dr. Brahmachari, and claimed by him

as a cure for Kala-azar, it was only right and proper that the defendant Company should be restrained from committing: an act of piracy so far as

the name Urea Stibamine is concerned and from selling their antimony compound under a get-up strikingly similar to that of the plaintiffs. I think

what I have set out above represents with accuracy the respective contentions of the parties, and it is now my duty to decide whether or not the

present Rule should be made absolute. I am not at the present moment trying the case: all that I have got to see, is whether a prima facie case for a

temporary injunction has been made out by the plaintiffs and whether the balance of convenience requires that I should grant temporary injunction

against the defendant Company till the final determination of this suit. In my view, on the evidence before me I am satisfied that the word ""Urea

Stibamine"" is not a descriptive word at all and that it has no chemical meaning whatsoever and that a prima facie case has been made out for my

interference. I have no desire to repeat myself but I think it has been abundantly shown from what has been set out above, the word Urea

Stibamine is in fact and in truth a fancy or an invented word and that the particular antimony compound which has come to be known in the trade

as Urea Stibamine has in fact a proper scientific and descriptive name. That being so, I am unable to say having ""regard to the user of the name

since 1922 that Dr. Brahmachari has no right whatsoever in respect of the name Urea Stibamine. In the second place I am unable to see that there

has not been and cannot be any confusion because of the fact that on the carton of Dr. Brahmachari's article the name Brahmachari appears. It

seems to me that the get-up of the defendant Company's article (within which word I include the pamphlet inside the defendant Company's

carton) is so strikingly similar to the get-up of the plaintiffs' article that I am unable to say that there cannot be any confusion. On the contrary, in

my view it is calculated to create confusion. I am not unmindful of the fact that there is such a thing as a standard get-up: but in deciding whether

one get-up is similar to another or is calculated to deceive purchasers into believing that they are purchasing the article of the other, one must

remember the class of persons who are purchasers of the article in question. It is said that doctors and chemists are not likely to be misled in this

case: they may or may not be misled: but it is not suggested and it cannot be suggested that in every case it is the doctor or the chemist who goes

out to purchase Urea Stibamine in the market. Any one with a doctor's prescription can go and buy Urea Stibamine and the get-up of the

defendant Company is in my view such that there is a strong probability of deception. In my opinion, instances of actual deception need not be

proved if the Court is otherwise satisfied of the probability of deception. As I said in my judgment in the case of the Imperial Tobacco Company

Ltd. Vs. Atlantic Tobacco Company, . ""The appeal is to the eye of the Judge and the Judge must, in the end, act upon his own view on a

comparison of the marks or designs after paying due attention to the evidence adduced before him See in this connection Paytons & Co. Ltd. v.

Snelling Lampard & Co., Ltd. (1901) 17 R.P.C. 628 : (1901) A.C. 308 : 70 L.J. Ch. 644 : 85 L.T. 287; Schweppes Ltd. v. Gibbons (1905) 22

R.P.C. 113.; In re Farrow (1891) 63 L.T. 233 where it is said that the question is to be decided partly by the Judge's eyesight and partly by the

view of the evidence: Bourne v. Swan & Edgar Ltd. (1903) 1 Ch. 211 : 72 L.J. Ch. 168 : 51 W.R. 213 : 57 L.T. 589 : 18 T.L.R. 59 : 20 R.P.C.

105; Alaska Packer's Association v. Crookes (1901) 18 R.P.C. 129. It has sometimes been said that the result of the case is that unless it is left

to the eyesight of the Judge to judge for himself, there is practically no evidence open to the plaintiff in an action of this nature. In my opinion the

true view is that while the Judge must not surrender his own independent judgment to any witness whatsoever, he must, at the same time, in order

to arrive at a proper conclusion, not disregard the evidence adduced in the particular case before him.

18. In this case I have very carefully and anxiously considered the question of the balance of convenience, and I have come to the conclusion that

in the circumstances stated above and on the evidence, adduced before me it is my clear and obvious duty to make the Rule absolute. I

accordingly make the Rule absolute and direct that the defendant Company, their servants and agents, be restrained until the final determination of

this suit and until the further orders of this Court from using or applying or causing to be used or applied to the antimony compound mentioned in

the plaint herein and sold by the defendant Company, the name Urea Stibamine with the present get-up or any colourable imitation thereof and I

further direct that the defendant Company, their servants and agents, be further restrained until as aforesaid from using or employing the said word

Urea Stibamine or any other words in a manner contrived or calculated to represent or induce the belief on the part of purchasers that the said

antimony compound sold by the defendant Company, their servants and agents is the antimony compound manufactured and sold by or on behalf

of the plaintiffs: plaintiffs undertaking in damages. Costs to be costs in the cause. Liberty to apply for an early hearing.