

sold in glass bottles with twelve panel-shaped sides, on five of which in raised words and letters "Atwood's Genuine Physical Jaundice Bitters, Georgetown, Mass." are blown in the glass, each bottle containing about a pint, with a light yellow printed label pasted on the outside designating the many virtues of the medicine, and the manner in which it is to be taken; and stating that it is manufactured by Moses Atwood, Georgetown, Mass., and sold by his agents throughout the United States.

The bill also alleges that the bottles thus filled and labelled are put up in half-dozen packages with the same label on each package; that the medicine was first invented and put up for sale about twenty-five years ago by one Dr. Moses Atwood, formerly of Georgetown, Massachusetts, by whom, and his assigns and successors, it has been ever since sold "by the name, and in the manner, and with the trade-marks, label and description substantially the same as aforesaid;" that the complainant is the exclusive owner of the formula and recipe for making the medicine, and of the right of using the same name or designation, together with the trade-marks, labels, and good will of the business of making and selling the same; that large sales of medicine under that name and designation are made, amounting annually to twelve thousand bottles; that the defendants are manufacturing and selling at Portland, Me., and at other places within the United States, unknown to the complainant, an imitation of the medicine, with the same designation and labels, and put up in similar bottles, with the same, or nearly the same words raised on their sides, in fraud of the rights of the complainant and to its serious injury; that this imitation article is calculated and was intended to deceive purchasers, and to mislead them to use it instead of the genuine article manufactured by the complainant, and has had, and does have, that effect. The bill therefore prays for an injunction to restrain the defendants from affixing or applying the words "Atwood's Vegetable Physical Jaundice Bitters," or either of them, or any imitation thereof, to any medicine sold by them, or to place them on any bottles in which it is put up, and also from using any labels in imitation of those of the complainant. It also prays for an accounting of profits and for damages.

Among the defences interposed are these:

that Moses Atwood never claimed any trade-mark of the words used in connection with the medicine manufactured and sold by him; and assuming that he had claimed the words used as a trade-mark, and that the right to use them had been transferred to the assignors of the complainant, it was forfeited by the misrepresentation as to the manufacture of the medicine on the labels accompanying it, a misrepresentation continued by the complainant.

In the view we take of the case, it will not be necessary to consider the first defence mentioned, nor the second, so far as to determine whether the right to use the words mentioned as a trade-mark was forfeited absolutely by the assignor's misrepresentations as to the manufacture of the article. It is sufficient for the disposition of the case, that the misrepresentation has been continued by the complainant. A court of equity will extend no aid to sustain a claim to a trade-mark of an article, which is put forth with a misrepresentation to the public as to the manufacturer of the article, and as to the place where it is manufactured, both of which particulars were originally circumstances to guide the purchaser of the medicine.

It is admitted that whatever value the medicine possesses was given to it by its original manufacturer, Moses Atwood. He lived in Georgetown, Massachusetts. He manufactured the medicine there. He sold it with the designation that it was his preparation, "Atwood's Vegetable Physical Jaundice Bitters," and was manufactured there by him. As the medicine was tried and proved to be useful, it was sought for under that designation, and that purchasers might not be misled, it was always accompanied with a label, showing by whom and at what place it was prepared. These statements were deemed important in promoting the use of the article and its sale, or they would not have been continued by the assignees of the original inventor. And yet they could not be used with any honest purpose when both statements had ceased to be true. It is not honest to state that a medicine is manufactured by Moses Atwood, of Georgetown, Massachusetts, when it is manufactured by the Manhattan Medicine Company in the City of New York.

Any one has an unquestionable right to affix to articles manufactured by him a mark or device not previously appropriated, to distinguish them