

plaintiff to go on and carry it out, and damages for the plaintiff's failure to do so. It was contended for the plaintiff that, inasmuch as the defendant company were asking to have the agreement carried out, it was not open to them to attack the validity of the patents, for such inconsistency would be embarrassing. The Master referred to *Liardet v. Hammond Electric Light Co.*, 31 W. R. 710, 711; *Evans v. Davis*, 10 Ch. D. 747, 27 W. R. 285; *Gent v. Hamson*, 69 L. T. N. S. 307; *Moore v. Ullcoats Mining Co.*, [1908] 1 Ch. at p. 587; *Beam v. Merner*, 14 O. R. 412; *Evans v. Buck*, 4 Ch. D. 432; and said that, if the plaintiff were confining his action to his claims under the agreement, he would be entitled to succeed on this motion; but he had asked for an injunction to restrain the defendant company from infringing his patents; and the statement of defence could not, therefore, be interfered with so as to eliminate the denial of the validity of those patents. On the other hand, the statement of defence seemed to be contrary to the decision in *Liardet v. Hammond Electric Light Co.*; it did not deny that the plaintiff's inventions were being used, and asked the Court to compel him to carry out the agreement. The Master suggests that the plaintiff should exercise his claim for infringement, and that the statement of defence should thereupon be amended so as to avoid any denial of the validity of the patents. If this suggestion is adopted, an order will be made accordingly. If not, the pleadings are to stand as at present. In either case, the costs of the motion to be costs in the cause. *Casey Wood*, for the plaintiff. *D. L. McCarthy, K.C.*, for the defendants.

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LOCHRIE v. CONSUMERS CORDAGE CO.—BOYD, C.—MAY 2.

*Contract—Supply of Material—Modification—Rate of Payment—Changed Conditions—Illegal Combination.*—Action for a declaration of the rights of the parties and for payment of the amount due under a contract for the supply of raw material. The Chancellor finds that under the changed conditions of the tariff the parties modified the arrangement which existed between them so that a reduced sum of \$270.83 per month was paid for eight years preceding the action; and that that might fairly be taken as their own settlement of what the future amounts should be; and upon this footing the plaintiff should recover from the 1st January, 1909 (up to which time payment had been made), at the rate of \$270.83 per month, with interest when overdue, down to the date of the expiry of the agreement in July, 1911. The judgment as to the sum due at