

him any royalty, regarding the patent as invalidated by transactions to which they had themselves been parties.

Plaintiff relies upon the terms of the agreement of 1892; contends that the notice was ineffectual; and that defendants are bound thereby to pay royalties during the life of the patent, and in any case that they cannot repudiate the license and yet continue to manufacture his invention without paying compensation.

There is, as I have said, no evidence that defendants renewed with plaintiff any of the terms of the agreement of 1892. A new agreement of some kind there undoubtedly was, but I cannot find that it contained any other terms than those already stated, viz., a license to manufacture, on the one side, and on the other to pay the specified royalties. That being so, both parties were at liberty to revoke or withdraw from and determine the license, and thus put an end to any agreement existing between them. Defendants might desire to do so in order to test the validity of the patent, which they were of course bound to recognize so long as they acted under the license. Their right to withdraw from the agreement, supposing that they were not disabled by the terms of it from doing so, and to refuse to act under the license, is clearly recognized by the House of Lords in *Crossley v. Dixon*, 10 H. L. Cas. 293, cited and followed by *Collins, J.*, in *Redges v. Mulliner*, 10 R. P. C. 21. While the agreement is subsisting, to adopt the language of Lord Chelmsford, defendant is not at liberty to use plaintiff's invention and to refuse to pay the royalties. "He cannot act under the agreement, and at the same time repudiate it. He may, if he pleases, put an end to the agreement, and he may use (the plaintiff's invention), but he must do so at his peril; he must do so under liability to be treated as an infringer and to be subject to an action for damages for that infringement."

That, as it appears to me, was the situation of the parties after November, 1896. To an action for damages and an injunction at the suit of plaintiff after that date it is clear that defendants could not have pleaded the license as a defence, for they had repudiated the terms upon which alone it was granted, and refused it except upon terms to which plaintiff had never assented. Plaintiff is, therefore, entitled to recover in this action only the royalty for the year 1896, which, for the reasons already given, may properly be placed at the sum of \$300, even though that year had not expired when the license was repudiated, as we see that defendants in the statement rendered by them for the previous year debit themselves with the minimum royalty at the end of