

FALCONBRIDGE, C.J.K.B.

JULY 8TH, 1913.

NEOSTYLE ENVELOPE CO. v. BARBER-ELLIS LIMITED.

*Contract—License to Manufacture and Sell Patented Envelopes—Non-compliance with Postal Regulations—Failure of Consideration—Repudiation of Contract—Acquiescence—Modified Envelope—Applicability of Patent.*

Action for damages for breach of a contract.

C. S. MacInnes, K.C., and Christopher C. Robinson, for the plaintiffs.

G. F. Shepley, K.C., and G. H. Kilmer, K.C., for the defendants.

FALCONBRIDGE, C.J.:—This is an action brought on an agreement dated the 26th September, 1910, whereby the plaintiffs granted to the defendants a license for eighteen years for the manufacture and sale of envelopes said to be covered by a certain patent of the Dominion of Canada, and, in consideration thereof, the defendants agreed to pay to the plaintiffs a certain royalty on a minimum quantity to be manufactured by the defendants—the quantity running into the millions, and increasing year by year up to a certain period.

The patented envelope was alleged by the plaintiffs and was supposed to be so constructed that circulars and other printed matter, within the classification of third-class postal matter, enclosed therein, were secured from falling out of the envelope and were secret, but that, the end of the envelope being open, the rate of postage would be that payable in respect of third-class matter, which was much less than the usual letter rate.

Section 82 of the Postal Regulations of the Dominion of Canada provides as follows: "Every packet of printed or miscellaneous matter must be put in such a way as to admit of the contents being easily examined. For the greater security of the contents, however, it may be tied with a string. Postmasters are authorised to cut the string in such cases if necessary to enable them to examine the contents; whenever they do so, they will again tie up the packet."

It is claimed by the defendants, and I find to be proved, that the envelope in question, when in use and in transit through the mails, cannot be opened so as to allow the contents to be examined and replaced without destroying the envelope. The