

Trial of Actions, Meredith, C.J.]

[July 24.

MACLAUGHLIN v. LAKE ERIE AND DETROIT RIVER R.W. CO.

*Patent for invention—Contract—Grant—License—Revocation—Right to manufacture—Changes in article manufactured—Reformation of contract.*

The plaintiff, the inventor and patentee of improvements in automatic air breaks, made an agreement in writing with the defendants, a railway company, by which he granted to them the license and right to use the invention and to equip their rolling stock in whole or in part therewith during the term of the patent, and agreed [to supply them with the air brake and all necessary equipment up to 5,000 sets, and to make all repairs to brakes and equipments so supplied, at the actual first cost plus 15 per cent. upon such cost, to be paid by the defendants, and declared that the license should be deemed to extend to and include every renewal, amendment, or substitution for the patent and all improvements thereon thereafter acquired. The defendants were not to pay anything for the right, the main consideration to the plaintiff for the grant being the advertisement which his invention would get.

*Held*, that this agreement did not operate as a license revocable at the will of the plaintiff, but as a grant of a right in respect of the invention, containing reciprocal obligations on the part of the grantor and grantees, viz., that of the grantor to supply the 5,000 brakes at the price named and that of the grantees to pay for them. *Guyot v. Thomson*, 11 R.P.C. 541, followed.

*Seemle* (even assuming that there was a revocable license), that an assignment of the patent by the plaintiff, after an action had been begun by him to restrain the defendants from infringing the patent, did not revoke such license.

*Held*, also, that the agreement conferred upon the railway company the right to manufacture the patent brakes which they were entitled under the agreement to use upon their railway. *Steam Stone Cutter Co. v. Shortsleeves*, 4 Ban. & Ard. 364, and *Illingworth v. Spaulding*, 43 Fed. Rep. 827, approved. But the agreement did not justify the making by the defendants of certain important changes in the mode of construction of the brake and in using the brake so altered, especially if they were using and claiming to use it as the plaintiff's invention, and so describing it.

*Held*, also, that the plaintiff could not, upon the evidence, succeed in having the agreement reformed so as not to give the defendants the right to manufacture the brakes.

*J. H. Rodd*, for plaintiff. *A. W. Anglin*, for defendants.