marks is limited to the use of them as applied to a device manufactured in accordance with the specifications annexed to letters patent No. 7011, and that no right is conferred upon him of using them in connection with or as applied to anything else, and therefore no right of using them in connection with the device for which the letters patent No. 44062 were granted.

It is not material to inquire, if that inquiry were open to defendant company in this action, whether patent No. 44062 was or is a valid patent, or whether it has not been rendered null and void by breech or non-observance of any of the provisions of the Patent Act. Granting that it is open to any one, and therefore to defendants, to manufacture or sell the device for which that patent was obtained, it is clearly, I think, not open to them to use plaintiff company's trade marks in connection with or to apply them to the article which they may so manufacture or sell.

Nor is it, I think, open to defendants to raise in this action any question as to the validity of patent No. 44062. Plaintiffs' claim does not rest upon that patent, nor is the question of its validity material to the disposition of their claim.

If plaintiffs were suing for an infringement of the patent, such a defence would or might be open, but the right to impeach the patent . . . can be enforced only by scire facias or in the Exchequer Court.

The agreement between Morrison and plaintiff company also provided that " in the event of the parties of the first part (plaintiff company) obtaining within the Dominion of Canada any letters patent for improvement in inspirators, they will give to the said party of the second part (Morrison) the first opportunity of entering into arrangements with them for the sale and exclusive manufacture, use, and sale of the said patented inventions within the Dominion of Canada."

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This provision is so indefinite and incomplete that specific performance of it is out of the question: Huff v. Shepard, 58 Mo. 242; Fogg v. Price. 145 Mass. 513, and cases there cited.

It was further argued that the conduct of plaintiff company had been such as in any case to disentitle them to an injunction. . . . In view of all the circumstances, the defendants have not, I think, made a case which would, on the principles upon which a court of equity acts in granting equitable relief, justify me in refusing to grant the relief which plaintiffs seek and which is necessary to be given to