

to some or all of such articles plaintiff's remedy must be sought in an action for the infringement of his patent. This question, from the view taken of plaintiff's rights in other respects, was not dealt with in the Court below.

It appeared that plaintiff was the patentee of an invention called an "improvement in document and letter files or holders." His patent was granted 15th November, 1889, and remained in force, having been once renewed, for ten years thereafter.

He granted to one Gottwalls, on 5th March, 1891, a license to manufacture in Canada during the life of the patent, for a royalty of 10 cents per holder, and a minimum, for the first year commencing 1st April, 1891, of \$200; for the second year, of \$300; for the third year, of \$400; and for the fourth year, commencing 1st April, 1895, and each following year, of \$500. The terms of this agreement need not be further referred to, as, except as to dates and amounts, they were the same as those of the agreement next to be mentioned, which appears to have been substituted for it. Gottwalls soon afterwards entered into partnership with one Orme under the name of Gottwalls & Co., and by an agreement under seal bearing date 1st June, 1892, between plaintiff and Gottwalls & Co., duly executed by both parties, plaintiff granted to the firm a license to make, use, and sell in the Dominion of Canada, document and letter files or holders containing the said improvement, upon the following conditions and considerations, viz., the licensees to pay, and they thereby agreed to pay, a royalty of 10 cents for each file or box holder containing the improvement, made by them in Canada or elsewhere; 2nd, the licensees to render a monthly statement of all files sold, and to pay the royalty within thirty days thereafter; 3rd, during the first year, beginning on 1st June, 1892, the royalty not to be less than \$200, even though less than 2,000 files sold, and during the second and following years the royalty not to be less than \$300; 4th, the license not to be transferable without consent of the licensor; 5th, the agreement, contract, and license were to last for the lifetime of the patent and any extension or renewals thereof, provided that the foregoing conditions were observed and kept, unless their observance was expressly waived by plaintiff.

By indenture dated 10th February, 1893, reciting the agreement of 1st June, 1892, Orme, with the assent of plaintiff, assigned to Edward Seybold and James Gibson his interest in the said invention and all his right, title, and interest in and to the said agreement, and the covenants and