

Sons, by which plaintiff company granted to T. McAvity & Sons (subject to the right of revocation) the exclusive license to manufacture at their factory in St. John and to sell within the Dominion of Canada, and for use only within the Dominion, "inspirators containing and embodying the inventions and improvements and any and all substantial and material parts of the same which are shewn and described in the said letters patent (No. 44062) for the term of the said letters patent and for any extension thereof which may be granted." The plaintiffs T. McAvity & Sons, under the authority of their license, had been for some time manufacturing inspirators for use on locomotive boilers which were called and known to the trade as "Hancock locomotive inspirators," and a considerable and valuable market had been obtained for them under that name.

The plaintiffs complained that the defendants were selling, and representing that they had the sole right to manufacture and sell, Hancock locomotive inspirators, and plaintiffs claimed a declaration that T. McAvity & Sons were the only persons entitled to manufacture and sell the Hancock locomotive inspirators in Canada, an injunction restraining defendants from manufacturing, selling, or representing that they had the right to manufacture and sell, the articles in question, and damages.

The defendants justified under an agreement made between plaintiff company and one James Morrison, whose business defendants succeeded to in the early part of 1893. This agreement was dated 10th March, 1886, and was entered into after it had been decided that patent No. 7011 was null and void, and in consequence of that decision. By this agreement it was provided that from and after the date of it, Morrison should have the sole right in the Dominion of Canada to the use of the trade marks belonging to plaintiff company known as the "Hancock inspirator" and "inspirator," such trade marks to be used by Morrison only in connection with the sale of inspirators which shall be manufactured by him as described in the letters patent No. 7011 of the Dominion of Canada granted to John T. Hancock on 24th January, 1877, and subsequently extended by patent to No. 13958 and No. 13979.

L. G. McCarthy, K.C., and A. M. Stewart, for plaintiffs.

G. H. Watson, K.C., and Grayson Smith, for defendants.

MEREDITH, C.J. (after stating the facts at length):—It is not, in my opinion, open to question that the right of Morrison under the agreement to use plaintiff company's trade