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SEPTEMBER 19TH, 1904.

C.A.

WOODRUFF v. ECLIPSE OFFICE FURNITURE CO.

Patent of Invention — License — Royalties — Assignment of License by Licensees—Formation of Company—Contract to Pay Royalties—Statute of Frauds—Consideration.

Appeal by defendants from judgment of MEREDITH, C.J. (2 O. W. R. 691) in favour of plaintiff upon the findings of a jury.

Action to recover royalties at the rate of \$300 per annum for the years 1896, 1897, 1898, and 1899, alleged to be due by defendants for the manufacture and sale by them, under license from plaintiff, of a certain patented invention belonging to him.

A. W. Fraser, K.C., for appellants.

F. A. Magee, Ottawa, for plaintiff.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.) was delivered by

OSLER, J.A.—There are two questions to be considered. The first is, whether any agreement was proved by which defendants were bound to pay the royalties for the whole or any part of the period sued for. The trial Judge held that there was, and gave judgment for plaintiff for the full amount for the years 1896, 1897, 1898, inclusive, and for the year 1899 up to the date of the expiration of the patent, at the rate of 10 cents for each article manufactured during that year \$234, or in all \$1,134. The other question is, whether the articles in respect of which the royalties are claimed were in fact manufactured under the license, or whether as