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ADM'R, v. NORTHERN PAC. R. CO.¹

Circuit Court, D. Minnesota.

March. 1886.

1. CONTRACT FOR USE OF INVENTION
CONSTRUED.

An agreement to pay \$30 for each of the first 400 locomotive engines to which an invention should be applied, is not an agreement to apply the invention to 400 locomotives, and to pay \$30 for each one.

2. SAME.

The terms of payment, under this contract, were \$6,000 within 30 days after the contract was executed, and the remainder within the period of one year. *Held*, that this was an agreement to pay \$6,000 absolutely within 30 days, and in case the invention was applied to a number of locomotives sufficient to produce, at \$80 for each, a greater sum than \$6,000, then this excess was the remainder contemplated, and was payable within the year.

In Equity.

Rockwood & Collom, for plaintiff.

W. P. Clough, for defendant.

NELSON, J. The contract upon which plaintiff's suit is founded requires the payment of \$30 for each of the first 400 locomotive engines to which the invention owned by plaintiff shall be applied by defendant. The terms of payment are \$6,000 within 30 days after the contract is executed, and the *remainder* within the period of one year thereafter.

The defendant did not agree to apply the invention to 400 locomotives, and pay \$30 for each one; but it agreed to pay \$6,000 absolutely within 30 days, and in case the number of locomotives to which it shall be applied within one year after execution of the contract at \$30 for each would produce a sum more than \$6,000, the *remainder*, that is, the excess over \$6,000,

it agreed to pay within one year. After payment shall have been made upon 400 locomotives, no further sum should be paid by the defendant for the use of the invention. The defendant was not compelled to use the invention upon all of the 400 locomotives, or upon any; but it is bound to pay \$6,000 within 30 days after the contract was executed, which it has done, and it is admitted that the invention is not used upon more than 200 locomotives.

Judgment will be entered in favor of the defendant.

¹ Reported by Charles C. Linthicum, Esq., of the Chicago bar

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