

this discount and commission upon machinery and apparatus sold in the specified territory. The stipulation entered into between the attorneys recognizes the loss of this percentage as the true rule for the assessment of the complainant's damages. It is the true rule. On the 2d of June, 1890, the defendant granted an exclusive license, under various patents for improvements in secondary batteries, to the Consolidated Electric Storage Company. The license covered the entire United States and the territories thereof. The consideration for this license was \$65,000 in cash and certain annual royalties. The proof shows that the \$65,000 was paid pursuant to the terms of the agreement. There is no proof of other payments. The complainant insists that it is entitled to recover the entire sum of \$65,000 as damages.

I am of the opinion that the master was correct in disallowing this claim. There were no facts before him from which he could formulate a correct rule of damages. There was no proof of the sale by the defendant or the storage company of a single secondary battery in the complainant's territory. There was no proof that the storage company had done any act in hostility to the complainant's interests, or that complainant had lost a sale because of the license. So far as this evidence goes there was a mere transfer of rights under certain letters patent. The complainant derived no pecuniary benefit from these patents while the defendant controlled them, and nothing has yet been shown which entitles the complainant to remuneration now. Certainly the mere transfer of the patents from one corporation to another does not confer that right. Even assuming that the complainant is entitled to some part of the \$65,000, there is nothing to show what part. That sum was paid for a license extending throughout the entire country. There is nothing to show what the rights so transferred, if confined to the complainant's territory, would be worth. The situation appears to be one where the language of the supreme court in *Machinery Co. v. Dolph*, 138 U. S. 617, 11 Sup. Ct. Rep. 412, seems applicable:

"On breach of such a contract, the principal matter in respect to which provision was made is the one to be mainly regarded. If subordinate provisions are clear and definite, and damages for disregard thereof determinable by plain and obvious rules, of course such damages may be recovered; but if because they are subordinate the provisions in respect thereto are indefinite, then the court may not, with the idea of preventing injustice, attempt to substitute equivalents therefor. The main purpose of the contract must be regarded and its specific provisions in connection therewith enforced, and proper damages given for the breach thereof. A lack of certainty as to terms of contract obligations of either party, or measure of damages for breach, is simply the misfortune of him who seeks to recover in case of a breach thereof."

The exception is overruled and the report of the master is confirmed.

BRUSH ELECTRIC CO. v. BRUSH-SWAN ELECTRIC LIGHT CO. OF NEW ENGLAND.

(Circuit Court, S. D. New York. January 16, 1892.)

PRINCIPAL AND AGENT—CANCELLATION OF CONTRACT.

The Brush Electric Company constituted a certain corporation its agent for a period of years for the sale of its machines in New England and other eastern states. Disagreements arose between them, and at length the Brush Company refused to furnish more machines under the contract. On suit by the New England Company the contract was upheld, but, pending further proceedings, the Brush Company filed a cross-bill to cancel the contract, alleging that since the former decision the New England Company had come under the control of hostile influences, namely, those of the Westinghouse Company, which was engaged in manufacturing machines competing with those of the Brush Company. This allegation was based mainly on the ground that an attorney having a merely formal relation with the New England Company, and who was the legal adviser of, and personally interested in, several corporations in which Mr. Westinghouse was interested, had written a letter containing the unauthorized statement that the New England Company was "controlled by the Westinghouse interests." It appeared at the trial that Westinghouse and Jackson, stockholders in the Westinghouse Company, had bought a controlling interest in a certain illuminating company. But no acts of hostility were shown. It further appeared that the illuminating company also had a contract of agency with the Brush Company, and that since it came under the alleged hostile influences it had sold more Brush machines than ever before. *Held*, that no cause was shown for canceling the contract.

In Equity. Final hearing on cross-bill, answer, and proofs.

The Brush Electric Company, owning certain patents, and engaged in manufacturing electrical machines thereunder, had a contract with the Brush-Swan Electric Company of New England, whereby the latter was constituted its exclusive agent for the sale of said machines in New England and other eastern states. The contract provided, among other things, that the New England Company was to receive as compensation a certain discount on the selling price, and that the Brush Company would not itself sell any machines in the specified territory. Various disagreements arose between the two companies, mainly growing out of the alleged inability of the New England Company to meet its payments to the Brush Company, as provided by the contract. At length the latter refused to furnish more machines, and began selling them in that territory itself. On suit by the New England Company, the contract was upheld, and the complainant declared to be entitled to an injunction and accounting. 41 Fed. Rep. 163. A rehearing was applied for and denied. 43 Fed. Rep. 225. Afterwards leave was given to file the cross-bill, upon which the present hearing is had. Id. 701.

John E. Parsons, Albert Stickney, and Gilbert H. Crawford, for cross-complainant, cited the following authorities:

In the case of an individual, the mere fact of divided duty constitutes a breach of the employment agreement. *Pearce v. Foster*, 17 Q. B. Div. 536; *Dieringer v. Meyer*, 42 Wis. 311; *Davoue v. Fanning*, 2 Johns. Ch. 252; *Michoud v. Girod*, 4 How. 554. It would be a defense in a suit for past compensation. *Murray v. Beard*, 102 N. Y. at page 508, 7 N. E. Rep. 553. And it might entitle the principal to damages up to the value to him of the agreement. *Panama, etc., Co. v. India Rubber, etc., Co.*, L. R. 10 Ch. App. 515.

Joseph H. Choate and William G. Wilson, for cross-defendant.