

unless the railway company was compelled to accept the shipments. They offered and tendered said company shipments of original packages packed in wooden boxes, which tenders of shipment were refused.

Glenn, Slaton & Phillips, for complainants.

Dorsey, Brewster & Howell, for defendants.

Before PARDEE, Circuit Judge, and NEWMAN, District Judge.

PER CURIAM. This cause came on to be heard upon application for injunction pendente lite, was submitted upon affidavits, and argued, whereupon this court, being of opinion that the business of complainants of transporting liquors into the state of South Carolina for sale there under the lawful police regulations of that state is a legitimate business, which is entitled to be protected, and that the Southern Railway Company, as a common carrier, is required to receive and transport the goods of the complainant when tendered in such packages as will constitute reasonable and safe condition for shipment, and being of opinion, under the evidence submitted, that wines and liquors in bottles, packed in wooden cases, and tendered in car-load lots, as described in the complainants' bill and amendments thereto, are in reasonable and proper condition for shipment, and that the defendant company should receive and transport the same: It is ordered, that an injunction pendente lite issue, enjoining the defendant company from refusing to receive and transport car-load lots of the complainants' goods, packed and protected as set forth in complainants' bill, when accompanied with a waiver releasing the carrier from all waste and breakage not the result of the negligence of the defendant company or its agents.

MINNESOTA TRIBUNE CO. v. ASSOCIATED PRESS.

(Circuit Court of Appeals, Eighth Circuit. January 31, 1898.)

No. 906.

DECREE ON APPEAL—MODIFICATION AFTER END OF TERM.

A motion to modify an order of affirmance will be denied, when the motion is filed long after the term at which the order was entered.

Appeal from the Circuit Court of the United States for the District of Minnesota.

This was a bill by the Minnesota Tribune Company against the Associated Press to specifically enforce the provisions of a contract. The circuit court dismissed the bill after a hearing on the merits (77 Fed. 354), and the complainant appealed. Heretofore, on November 22, 1897, this court filed an opinion sustaining the rulings below, and directing an affirmance of the decree. 83 Fed. 350. The complainant has now moved to modify the order of affirmance, so as to direct the dismissal of the bill, without prejudice to the complainant's right to sue at law.

Munn & Thygeson, for appellant.

W. D. Cornish and Emanuel Cohen, for appellee.

Before BREWER, Circuit Justice, THAYER, Circuit Judge, and RINER, District Judge.

PER CURIAM. The motion filed in this case on January 17, 1898, to modify the order of affirmance herein so as to direct the dismissal of the bill without prejudice to the complainant's right to sue at law, is denied for two reasons: First, because the majority of the court are of opinion that the decree of the circuit court dismissing the cause of action on its merits was right; and, second, because the motion to modify the order of affirmance in this court was not filed until long after the term had lapsed at which the order of affirmance was entered.

BUHL v. STEPHENS et al.

(Circuit Court, D. Indiana. February 8, 1898.)

No. 9,319.

1. STATUTE OF FRAUDS—AGREEMENT TO BE PERFORMED WITHIN ONE YEAR.

An agreement by which a licensee of a process is given exclusive rights for one year, with the option to then surrender his claim, or to continue his exclusive rights for the further term of sixteen years, is a contract "not to be performed within one year from the making thereof," and hence unenforceable under the statute of frauds, unless in writing.

2. LICENSE—ELECTION NOT TO TERMINATE.

Where a license for the exclusive use of a process allows the licensee within one year to elect to either abandon or continue it, his suit pending the year to restrain violation of it by the licensor constitutes a final election, and renders the agreement mutually obligatory.

3. STATUTE OF FRAUDS—CONFLICT OF LAWS—LAW OF FORUM.

A statutory prohibition in a given state against actions upon oral agreements not to be performed within one year relates to the remedy and procedure, and is, therefore, applicable to an action in that state, although brought upon a contract valid and enforceable under the laws of the state where it was made and was to be performed.

4. PLEADING—STATUTE OF FRAUDS.

In a suit in equity to enjoin the violation of a contract, an answer denying the making of the contract is sufficient to let in the defense of the statute of frauds.

5. FEDERAL COURTS—STATUTE OF FRAUDS—EFFECT OF STATE STATUTE.

The statute of frauds of a state is applicable to a suit in equity brought in a federal court of that state.

6. EQUITY JURISDICTION—BILL TO RESTRAIN VIOLATION OF LICENSE.

Where an exclusive licensee of a process seeks relief for alleged violation thereof by the licensor, the suit is properly one of equitable cognizance, both because an action at law would not afford such certain, complete, and beneficial relief, and because it would be impossible at law to accurately determine how much the complainant would lose from inability to secure his exclusive rights.

A. W. Hatch and Tanner & Whitla, for complainant.

Ryan & Thompson and Elliott & Elliott, for defendants.

BAKER, District Judge. This is a suit in equity, brought on February 24, 1896, by Frank H. Buhl, a citizen of the state of Pennsylvania, against John Stephens and the Midland Steel Company, cit-