The decree of the circuit court is reversed, and the case is remanded to that court, with directions to overrule the demurrer, with costs, and to take such further proceedings in the suit as shall be proper, and not inconsistent with the opinion of this court.

LANSING et al. v. STANISICS et al.

(Circuit Court of Appeals, Eighth Circuit. April 10, 1899.)

No. 1,100.

REVIEW—CONFLICTING EVIDENCE—FINDINGS OF FACT.

The findings of the chancellor on a question of fact will not be disturbed, unless clearly shown to be against the weight of evidence.

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

Suit by Theodore Stanisics, as trustee, against James F. Lansing and Emma Lansing, to foreclose a mortgage. Judgment for plaintiff, and defendants appeal. Affirmed.

Lionel C. Burr (Charles L. Burr, on brief), for appellants.

Alfred W. Scott, for appellees.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. The appellee filed in the court below his bill to foreclose a mortgage on lots in Lincoln, Neb., given to secure a note for $2,000, and $41.20 taxes. The appellants answered that, after the execution and delivery of the note and mortgage, they were altered and changed by inserting in each instrument the words "of Chicago, Ill.," and "in gold coin." The connection in which these words occur in the instrument is this: The note reads:

"On the second day of April, 1898, I promise to pay Theodore Stanisics (trustee), *of Chicago, Ill.*, or order, two thousand (*in gold coin*) dollars."

It is claimed the italicized words are interpolated. The plaintiff denied that the instrument had been altered. The evidence on the issue thus raised is conflicting. The learned chancellor of the circuit court found the issue in favor of the plaintiff, and decreed a foreclosure of the mortgage. The finding of the chancellor in the lower court on a question of fact is presumptively right, and will not be disturbed unless the appellate court can clearly see that it is opposed to the weight of evidence. Snider v. Dobson, 40 U. S. App. 111, 21 C. C. A. 76, and 74 Fed. 757. We have read very carefully all the evidence in this case, and are not able to say that the lower court erred in its finding; indeed, we think its finding is supported by the weight of the evidence. The decree of the circuit court is affirmed.

WESTINGHOUSE ELECTRIC & MANUFACTURING CO. v. GENERAL ELECTRIC CO.

(Circuit Court, N. D. New York. May 22, 1899.)

CONTRACTS—CONSTRUCTION—SALE OF PATENTED ARTICLES.

A provision of a contract that it shall not be deemed to authorize either party to make sales of articles covered by patents owned by the other, cannot be construed as a covenant against the making of such sales, so as to afford a basis for a suit by one party to enjoin the other from making them, but it leaves the parties, as to such sales, as they stood before the contract was made.

In Equity. On demurrer to bill.

William D. Guthrie, M. B. Philipp, and Paul D. Cravath, for complainant.

W. B. Hornblower and Frederick P. Fish, for defendant.

COXE, District Judge. This is a suit in equity in which the court acquires jurisdiction by reason of diverse citizenship. The bill seeks to enjoin the defendant from selling certain electrical devices to its licensee in New York City in alleged violation of an agreement entered into between the parties to this action, March 31, 1896. The bill rests solely upon this agreement. Whatever right the complainant possesses must be found there. Unless the agreement forbids the contemplated sale the action must fall. If the defendant has covenanted not to make the sale the action is well brought; if it has not so covenanted the action is without foundation. This proposition is conceded on all sides. The agreement, so far as it is necessary to consider the same, may be epitomized as follows: (1) Each party grants to the other a license under all United States patents owned or controlled by it subject to outstanding licenses. (2) Territorial licenses and obligations existing thereunder are not affected by the sweeping cross-licenses. (3) Neither party is permitted to grant licenses to its territorial licensees under the patents of the other party. (4) The contract neither authorizes nor forbids the defendant to sell to its licensee in New York City apparatus covered by the patents of the complainant. The complainant is, of course, treated in the same manner. (5) These sales are recognized, but the party making them has no power to grant licenses to use or sell such apparatus under the patents of the other party. The cross-licenses granted by the agreement are thus qualified so as to preclude territorial licensees from receiving licenses or rights under the patents of the other party. In short, the contract provides for a broad interchange of licenses, carefully guarding, however, the vested rights of existing licensees. As to them, the situation was delicate and complicated and it was evidently deemed best to leave it precisely as it existed before the contract was signed. They gained no new rights and lost no existing rights by reason of the agreement between their principals. That the defendant could have sold the multiphase apparatus to its New York licensee prior to March 31, 1896, is beyond dispute. It can do so now unless it has agreed that it will not make such sales. The agreement will be searched in vain for such a