

before the end of the next term, even if the decree was final. On the merits of the case equity and justice are with the defendant.

Aside from the answers and exhibits attached, there is no evidence adduced. From the answers and exhibits it appears that the defendant, as administrator *de bonis non*, with the will annexed of Jacob V. Johnson, came into possession of the sum of \$541.25, long prior to the appointment of plaintiff as receiver in the case of *W. H. Johnson v. W. R. Alexander*, by this court, and that prior to notice he (defendant) had fully disbursed the same under orders and judgments of the probate court of Franklin county, by which court he was appointed administrator, and with which court he has settled his accounts. On what equity he can be compelled to pay again has not been pointed out. The former decree was based on the ground "that said Moody has disbursed the same without authority of law, and contrary to the orders of this court." This does not appear at this time, but the contrary is fully established. Moody was not a party to the main case, and he disbursed the money under orders of the court which appointed him administrator long prior to notice from this court.

A decree will be entered at the next term, vacating the decree entered herein at the April term, 1882, and dismissing all proceedings against Amos L. Moody, with costs.

BLAIR v. ST. LOUIS, H. & K. R. Co.¹

(Circuit Court, E. D. Missouri. March 24, 1884.)

1. LIENS UPON PROPERTY IN THE HANDS OF A RECEIVER.

Where a railroad has been placed in the hands of a receiver by this court, persons claiming statutory liens may be permitted to file them here with the same force and effect as if filed respectively in the state courts.

2. SAME—STATUTORY AND EQUITABLE LIENS ON THE SAME FOOTING.

Where like demands are presented from other states in which no statutory lien therefor exists, they will be entitled to the same *status* as statutory liens.

In Equity. Order.

Butler, Stilman & Hubbard, for complainant
William P. Harrison, for defendant.

TREAT J. Inasmuch as many intervening petitions have been filed in this case, and others may be, praying for orders on the receiver to pay the sums claimed out of the net income of the defendant corporation as operated by said receiver, and also out of the funds by him raised on his certificates issued, and to be issued, under the orders of this court, as a first lien on the property of said corporation, and on the property by him acquired under the orders of this court, in

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.

the course of his administration of his trust, and inasmuch as some of said petitions may rest on statutory liens, conditioned on the notice and proceedings required by statute,—

It is ordered that, to avoid expense and delay, all persons claiming statutory liens be permitted to file the same in this court, with the same force and effect as if filed, respectively, in the state courts.

It is further ordered that where like demands are presented from other states, in which no statutory lien therefor exists, they shall be entitled to the same *status*, so that statutory and equitable liens may rest on a like basis.

Inasmuch as this court has heretofore settled the rules of law and equity by which all intervening claims in cases like this are to be adjudged, and the United States supreme court has more definitely and fully prescribed such rules, in *Fosdick v. Schall*, 99 U. S. 235; *Barton v. Barbour*, 104 U. S. 126; *Miltenberger v. Ry.* 106 U. S. 286; S. C. 1 Sup. Ct. Rep. 140; *Union Trust Co. v. Souther*, 107 U. S. 591; S. C. 2 Sup. Ct. Rep. 295; *Union Trust Co. v. Walker*, 107 U. S. 596; S. C. 2 Sup. Ct. Rep. 299.

It is ordered that all intervening claims filed, or that may hereafter be filed, in this case, be referred to the special master herein, for his report thereon, his reports to state distinctly whether the respective demands are such as should be paid by the receiver under the rulings of the United States supreme court, or are merely claims at large against the defendant corporation, devoid of a lien, statutory or equitable, prior in right to the lien of the mortgage sued on.

It is further ordered that when an intervening claim, so far as the facts on which it rests, fully appears from the books of the defendant to be correct, the master may proceed to pass thereon without further evidence, unless, in his opinion, further evidence is needed, or some person in interest appears to contest the same.

It is further ordered that the master give due notice to the respective claimants or their attorneys, also to the trustee and receiver or their attorneys, when and where he will proceed to consider and pass upon their demands.

The right of exception to proceedings before the master and to his reports is reserved. The receiver should, in all of these demands, have notice of the time and place of hearing the same before the master and in court; also the solicitor of the complainant, with leave to be heard in person or by attorney.

To avoid delay and expenses the receiver and complainant should have an attorney to attend to this business who is an officer of this court, and ready to conduct the business promptly and efficiently, and to accept service accordingly.¹

¹The same order was made in the case of *Central Trust Co. v. Texas & St. L. Ry. Co.*

DONAHUE and others v. ROBERTS and others.*

(Circuit Court, E. D. Missouri. March 21, 1884.)

1. DEPOSITIONS—CERTIFICATE.

Where depositions are taken *de bene esse*, under section 865, Rev. St., before a notary, his certificate should state, among other things, (1) that he is not a party in interest; (2) that the depositions were reduced to writing in the deponent's presence; and (3) in what court it is to be used.

2. SAME—AMENDMENTS.

Where a notary's certificate fails to comply with the requirements of law, leave may be given to amend it.

In Equity. Motion to suppress depositions.

The grounds of the motion sufficiently appear from the opinion of the court.

Walker & Walker, for complainants.

Lucien Eaton, for defendants.

TREAT, J., (*orally*.) The motion to suppress will be sustained for a number of reasons: *First*, the depositions are certified as taken in the wrong court; *second*, it is not stated that the notary taking them was not a party in interest; *third*, it is not stated that they were reduced to writing in the presence of the deponent,—all of which propositions have obtained ever since 1789. The motion to suppress will be sustained. These matters being, as held by the supreme court over and over again, in derogation of the common law, the party must conform to the requirements of the statute, otherwise the depositions will not be received.

Leave is given to withdraw the depositions in order that the notary's certificate may be amended.

WARING and another v. LOUISVILLE & NASHVILLE R. Co.†

(Circuit Court, S. D. Alabama. February, 1884.)

1. CONTRACTS.

When writings which amount to a contract between the parties are not complete in themselves to show what the contract was, the court must look to the surrounding circumstances when the contract was made.

Van Epps v. Walsh, 1 Woods, 598.

The Orient, 4 Woods, 262; S. C. 16 FED. REP. 916.

2. LEASE.

The implication of law, resulting from a payment of rent under a tenancy at will, that the tenancy becomes one from year to year, is not strong enough to overcome the fact that there was a distinct understanding between the parties as to the nature of the tenancy.

† Reported by Benj. F. Rex, Esq., of the St. Louis bar.

* Reported by Joseph F. Hornor, Esq., of the New Orleans bar.