

KLEIN V. FLEETFORD ET AL.

*Circuit Court, D. Colorado.*

May 9, 1888.

INJUNCTION—MODIFICATION—MOTION BEFORE ANOTHER JUDGE—URGENCY.

Unless the necessity is so urgent as to require immediate action, an injunction will not be modified, changed, or set aside, except by the same judge who granted it.

In Equity. Motion to modify injunction.

*S. P. Rose* and *H. W. Hobson*, for complainant.

*T. R. Ower* and *O. D. F. Green*, for defendants.

BREWER, J. This is a motion to modify an injunction order made by the district judge on the 13th day of April. I had occasion last term, in deciding a case, to say to counsel that as a rule injunctions issued by one judge would remain, unless modified, changed, or set aside by the same judge. I need not repeat the reasons which were then stated. Judge HALLETT being away when this motion was presented, it seemed to me that it might prove an exception to that rule; that I might be justified in making an examination of the papers, and seeing if any emergency required immediate action. I have examined them. They are quite voluminous, and while I think it would be right to make the modifications which are asked; those modifications being simply to the effect that the party in charge should be some indifferent person, and not one who had been heretofore the active supporter of either of the parties, and also that each party should be allowed to go upon the premises for inspection. Each of these things I think ought to be done. It is very evident, from an examination of these voluminous pleadings, that there is going to be a protracted controversy. It is very evident from the affidavits that there has been a good deal of quarreling between these parties, who are joint owners of the property. It is very evident that there is deep feeling existing between them. So I think it can be

no more than fair, in the course of that litigation, to have some one in charge who has never been identified with either party; who would be therefore free from suspicion, to say the least. Yet, after examining these papers, I do not see that there is that urgency for immediate action that would now justify me in putting some one besides Mr. Mitchell in control. The powers given him are limited. If he should remain ten days or two weeks longer, until the district judge can examine this, I think no harm will be done to either side. And so, although I think the parties would be entitled to the relief they ask, I shall *pro forma* overrule the motion, giving leave to renew it before the district judge as soon as he returns.