

The defendant in error, Henry Stern, having on the 27th of April, 1896, in pursuance of the direction of the opinion herein, filed in the circuit court of the Western district of Michigan, Southern division, a remittitur of so much of the judgment entered in his favor as relates to special costs and expenses entered on the 20th of June, 1895, and thus leaving the judgment as it was originally entered on the 22d of March, 1895, and having filed a transcript of said remittitur in this court on the 22d of April, 1896, it is now ordered that said judgment of the 22d of March, 1895, be, and the same is, affirmed, and that the plaintiff in error recover of the defendant in error his costs in this cause.

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SNIDER et al. v. DOBSON et al.

(Circuit Court of Appeals, Eighth Circuit. May 11, 1896.)

No. 772.

APPEAL—QUESTION OF FACT—FINDING OF CIRCUIT COURT.

Where a decision of the circuit court turns solely upon an issue of fact, and the evidence is fully adequate to justify the finding made by the court, though different, unprejudiced minds might draw from it different inferences and reach different conclusions, the circuit court of appeals will not overrule such finding, or reverse the decree entered thereon.

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

Judson N. Cross (Henry G. Hicks, Frank H. Carleton, and Norton M. Cross with him on the brief), for appellants.

Arthur M. Keith and Robert G. Evans (Lewin W. Barringer, Charles T. Thompson, and Edwin K. Fairchild with them on the brief), for appellees.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

THAYER, Circuit Judge. This suit was brought by John Dobson and James Dobson, the appellees, against Samuel P. Snider, Austin F. Kelley, and the Union National Bank of Minneapolis, the appellants, to cancel two deeds conveying large tracts of pine land, situated in Hubbard and Cass counties, Minn., on the ground that they had been fraudulently contrived and executed. The deeds, which were absolute conveyances in fee simple, were executed by the defendant Samuel P. Snider on November 21, 1890, in favor of the defendant Austin F. Kelley, who was vice president of the Union National Bank, to secure an indebtedness of Snider to said bank in the sum of about \$44,000. Said conveyances were not filed for record in the counties where the pine lands were situated until November 23, 1891, and December 5, 1891, respectively. In the meantime—that is to say, in May, 1891—Snider executed and negotiated two notes in the sum of \$5,000 each, which were purchased by the complainants below some time in the month of July, 1891, as they claimed, in the belief that Snider was still the owner of the pine lands in question. These notes matured on November

4, and November 11, 1891, respectively, and were not paid, and shortly thereafter the deeds conveying the pine lands, which were then held by the Union National Bank, were filed for record in the proper counties. Subsequently the complainants below recovered a judgment on said notes in the sum of \$10,295.82, and, as judgment creditors of Snider, they commenced the present suit to have the deeds adjudged to be fraudulent and void, so far as they were concerned. The facts are more fully stated in the opinion of the trial judge. *Dobson v. Snider*, 70 Fed. 10. The lower court granted the relief prayed for in the bill, and the case is before us on an appeal from that decree.

In the circuit court the decision turned solely upon an issue of fact, the question being whether the two deeds now in controversy were withheld from record by the bank in compliance with a secret understanding between Samuel P. Snider and said bank that they should be so withheld from record, for the purpose of protecting the grantor's credit, and giving him a reputation for large means with the business world. The circuit court decided this issue in the affirmative, and for that reason adjudged the deeds to be void. We have carefully read and considered all the testimony contained in the record, and have reached the conclusion that there were facts and circumstances developed on the hearing of the case which were fully adequate to warrant the inference that the circuit court appears to have drawn. The issue being one of fact, it would subserve no useful purpose to narrate the evidence in detail. It will suffice to say that the testimony was of such nature, and the circumstances under which the deeds were executed were of such character, that different, unprejudiced minds might with equal reason draw different inferences and reach different conclusions. This court, however, has repeatedly declared that where a master or chancellor has considered conflicting evidence, and made a finding thereon, the finding will be taken as presumptively correct, and will be permitted to stand, unless an obvious error has intervened in the application of the law, or some serious and important mistake appears to have been made in the consideration of the evidence. *Warren v. Burt*, 12 U. S. App. 591, 600, 7 C. C. A. 105, 58 Fed. 101; *Latta v. Granger*, — U. S. App. —, 15 C. C. A. 228, 230, and 68 Fed. 69; *Paxson v. Brown*, 27 U. S. App. 49, 10 C. C. A. 135, 144, and 61 Fed. 874; *Stuart v. Hayden*, 18 C. C. A. 618, 72 Fed. 402, 408; *McKinley v. Williams* (decided April 17, 1896) 74 Fed. 94. The same rule has been announced and acted upon by the supreme court of the United States on several occasions. *Tilghman v. Proctor*, 125 U. S. 136, 8 Sup. Ct. 894; *Kimberly v. Arms*, 129 U. S. 512, 9 Sup. Ct. 355; *Evans v. Bank*, 141 U. S. 107, 11 Sup. Ct. 885; *Furrer v. Ferris*, 145 U. S. 132, 134, 12 Sup. Ct. 821. See, also, *Richards v. Todd*, 127 Mass. 172, and *Donnell v. Insurance Co.*, 2 Sumn. 371, Fed. Cas. No. 3,987. We have concluded, therefore, that, inasmuch as the case turned upon an issue of fact, and inasmuch as the evidence was fully adequate to justify the finding made by the trial judge, it should be allowed to stand. The decree of the circuit court is accordingly affirmed.

## FOLEY et al. v. GUARANTEE TRUST &amp; SAFE-DEPOSIT CO. et al.

(Circuit Court of Appeals, Eighth Circuit. June 8, 1896.)

No. 806.

## 1. EQUITY PRACTICE—PRELIMINARY INJUNCTION.

It is not enough to justify the circuit court of appeals in reversing an order of the circuit court refusing a preliminary injunction to stay a foreclosure sale, in a suit to vacate the decree of foreclosure, that the complaint probably contains sufficient averments to warrant the relief prayed for; but it must be made to appear that there are reasonable grounds for believing that the material allegations of the bill, tending to show fraud and collusion, are true, and that they will probably be established on the final hearing.

## 2. SAME.

Complainants filed a bill to vacate a decree in a railroad foreclosure suit, alleging fraud and collusion in procuring the decree, and applied for a preliminary injunction to restrain the sale. It appeared that certain parties had intervened in the foreclosure suit, and after full opportunity to present the same objections to the entry of the decree, in the presentation of which complainants had co-operated with them, they had withdrawn their objections. Complainants averred that this was done without their knowledge, but made no attempt to show any improper motive. It also appeared that complainants had made no effort to attack the decree for three months after its entry, and that on the eve of the sale they had made a demand on one of the defendants in their bill to buy their interests in order to avoid the suit. *Held*, that these circumstances were sufficient to justify the denial of the preliminary injunction.

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

This was an original bill which was filed by the above-named appellants against the above-named appellees to vacate and annul a decree of foreclosure that had been rendered by the circuit court of the United States for the district of Minnesota, and to enjoin a sale of the mortgaged property that had been advertised under and in pursuance of said decree of foreclosure. As a ground for such relief, the bill contained, in substance, the following allegations: That the Duluth & Winnipeg Railroad Company (hereafter termed the "Railroad Company") was organized in the year 1878 to build a line of railroad from the city of Duluth, in a northwesterly direction, to the Northern boundary of the state of Minnesota; that in the year 1890 the North Star Construction Company (hereafter termed the "Construction Company") was organized for the purpose of building and equipping said Duluth & Winnipeg Railroad, for which it was to receive certain bonds and stocks of said railroad company, and to have possession of said railroad until it was completed: that between January 1, 1890, and January 1, 1893, said construction company built about 100 miles of said railroad, and that in the meantime the said railroad company executed and delivered to the Guarantee Trust & Safe-Deposit Company, one of the defendants, a certain mortgage upon its line of railroad to secure the payment of certain bonds that had been issued for the purpose of constructing and equipping said railroad; that in October, 1894, a suit was commenced in the circuit court of the United States for the district of Minnesota by said Guarantee Trust & Safe-Deposit Company against said railroad company, and against said construction company, for the purpose of foreclosing said last-mentioned mortgage or deed of trust; that in said suit a receiver of said railroad was duly appointed; and that thereafter, on January 28, 1895, a decree of foreclosure was duly entered by consent of the parties thereto. The bill averred, in substance, that subsequently, on January 31, 1895, certain stockholders of said Duluth & Winnipeg Railroad Company intervened in said foreclosure suit for the protection of their interests, and were permitted to file an answer to the bill of foreclosure,