

**MEMORANDUM DECISIONS.**

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**BURLINGAME v. LYONS.** (Circuit Court of Appeals, Ninth Circuit. February 6, 1896.) No. 260. In Error to the Circuit Court of the United States for the Northern Division of the District of Washington. Bausman, Kelleher & Emory, for plaintiff in error. White & Munday, for defendant in error. No opinion. Dismissed by agreement pursuant to the twentieth rule.

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**BURNS v. WELLS CULTIVATOR CO.**<sup>1</sup> (Circuit Court of Appeals, Sixth Circuit. May 6, 1897.) No. 469. Appeal from the Circuit Court of the United States for the Eastern District of Michigan. Chas. H. Fisk, for appellant. N. S. Wright, for appellee. No opinion. Decree reversed and bill ordered dismissed.

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**CAMPBELL et al. v. IRON-SILVER MIN. CO.** (Circuit Court of Appeals, Eighth Circuit. February 15, 1897.) No. 906. In Error to the Circuit Court of the United States for the District of Colorado. Edward O. Wolcott and Joel F. Valle, for defendant in error. No opinion. Docketed and dismissed, with costs, pursuant to the sixteenth rule, on motion of defendant in error. See 10 C. C. A. 172, 61 Fed. 982.

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**CENTRAL TRUST CO. OF NEW YORK v. SOUTHERN RY. CO. et al.** (Circuit Court, W. D. North Carolina. June 30, 1897.)

**SIMONTON**, Circuit Judge. This bill is filed by the trustee of a mortgage executed by the Southern Railway Company to secure bonds to the amount of millions of dollars. The mortgage covers the entire system and all the property of the mortgagor, including the lease of the North Carolina Railroad. The bill declares that this lease is of vital importance to the value of the system, and to the security of the mortgage; that the threats to rescind, destroy, or break the lease will not only result in a permanent injury to the security it holds, but is now creating alarm, and is disturbing the value of the securities on the market; that the danger and loss threatened are irreparable. The bill, stating the same facts, is against the same parties, meets the same responses, and depends on the same facts and principles as in the case of Southern Ry. Co. v. North Carolina R. Co. (just decided) 81 Fed. 595. It is subject to the same conclusion. It is therefore ordered that the question of fact inquired into, which question is as follows: "Was the lease executed bona fide, without fraud, covin, misrepresentation, or malpractice of any sort? This is a question wholly of fact. The charge is made by the defendants Messrs. Russell and Walser, and of the new board of directors, and in the answer of the lessor filed by them." Let this issue be referred to Kerr Craige, Esq., as special master, under the following instructions: That he take such testimony as may be produced before him touching all matters relating to or incidental with this question, holding references at such time and place as may be most convenient; that upon this issue the defendants the new board of directors and Messrs. Russell and Walser have the affirmative of this issue, and the opening and reply in the testimony; and that they be allowed 60 days, if so long be necessary, within which to produce testimony, dating from the service of this order; that the complainant and the old board of directors have the negative of this issue, and that they be allowed 60 days, if so long be necessary, after the opposite party announce their evidence closed, and that 20 days, if so long be necessary, be allowed for reply, beginning when respondents announce that

<sup>1</sup> Rehearing denied July 6, 1897.

they have closed; and that said special master report the evidence with all convenient speed thereafter. In the meantime the restraining order heretofore issued is continued until further order.

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**CHICAGO & A. R. CO. v. CAMPBELL.**<sup>1</sup> (Circuit Court of Appeals, Eighth Circuit, February 23, 1897.) No. 843. In Error to the Circuit Court of the United States for the Eastern District of Missouri. Joseph S. Laurie, Marshall F. McDonald, and Thomas T. Fauntleroy, for plaintiff in error. F. W. Lehmann and O'Neill Ryan, for defendant in error. No opinion. Affirmed, with costs, by divided court.

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**CITY OF PLATTSMOUTH, NEB., v. POLLOCK.** (Circuit Court of Appeals, Eighth Circuit, May 4, 1897.) No. 926. Appeal from the Circuit Court of the United States for the District of Nebraska. Matthew Gering, for appellant. Samuel M. Chapman and A. N. Sullivan, for appellee. No opinion. Dismissed, with costs, on motion of appellee, for want of jurisdiction.

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**GRASS v. MCGHEE.** (Circuit Court of Appeals, Fifth Circuit, May 4, 1897.) No. 384. Appeal from the Circuit Court of the United States for the Northern District of Alabama. Lawrence Cooper, for appellant. Milton Humes and John H. Sheffey, for appellee. Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

PER CURIAM. The decree appealed from is affirmed, with costs.

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**CURRAN et al. v. GRADY TRADING CO.** (Circuit Court of Appeals, Eighth Circuit, May 4, 1897.) No. 928. In Error to the United States Court of Appeals for Indian Territory. T. N. Foster, for plaintiffs in error. No opinion. Dismissed, with costs, on motion of counsel for plaintiffs in error.

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**DAVIS v. DAVIS et al.** (Circuit Court of Appeals, Fifth Circuit, May 4, 1897.) No. 555. Appeal from the Circuit Court of the United States for the Southern District of Mississippi. This was a suit in equity by W. J. Davis against H. L. Davis and others to establish an equitable title to, and recover possession of, the one undivided half of the Homo Chitto plantation, in Adams county, Miss. The circuit court sustained a general demurrer to the bill, but on appeal this decree was reversed by this court, and the cause remanded for further proceedings. See 18 C. C. A. 433, 72 Fed. 81. The court below, having accordingly heard the cause upon the merits, dismissed the bill because the plaintiff had failed to show any right to the relief sought. From this decree the complainant has now appealed. T. A. McWille, for appellant. Edward Mayes, for appellee. Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

PER CURIAM. The facts established by the evidence are not sufficient to warrant the finding that Samuel B. Newman, Sr., had actual notice of W. J. Davis' equity in the lands in controversy, nor to warrant the presumption that Mrs. Mattie L. Newman, the mortgagee, knew, or ought to have known, of any such equity. The decree appealed from is affirmed.

<sup>1</sup> Rehearing denied April 12, 1897.