

COCKRILL v. UNITED STATES NAT. BANK. (Circuit Court of Appeals, Eighth Circuit. September 15, 1897.) No. 984. In Error to the Circuit Court of the United States for the Eastern District of Arkansas. S. R. Cockrill, for plaintiff in error. John Fletcher and W. C. Ratcliffe, for defendant in error. No opinion. Affirmed, with costs.

COOKE v. UNITED STATES.

(Circuit Court of Appeals, Fifth Circuit. June 7, 1897.)

No. 583.

CRIMINAL LAW—APPEAL—CONFESSION OF ERROR.

Error from the District Court of the United States for the Northern District of Texas.

Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

PER CURIAM. In this case, in which J. H. Cooke, the plaintiff in error, was indicted, tried, convicted, and sentenced for embezzlement of money order funds of the United States, the United States, through their counsel, confess error in the peremptory instruction given by the trial judge to find the plaintiff in error guilty; and being satisfied that, under the facts and circumstances of the case, such peremptory instruction was erroneous, the judgment of the district court must be reversed, and the cause remanded, with instructions to set aside the verdict heretofore rendered, and award a new trial. Other important questions arise upon the record, and are assigned as error, but upon them we make no ruling whatever, because they have not been fully argued, and need not necessarily arise on another trial of the case. Reversed and remanded.

ELROD v. ADAMS EXP. CO. (Circuit Court of Appeals, Sixth Circuit.) No. 525. In Error from the United States Circuit Court for the District of Kentucky. O'Neal & Pryor and George Weissinger Smith, for plaintiff in error. Lawrence Maxwell, Jr., and Stone & Sudduth, for defendant in error. Dismissed, on motion of defendant in error, pursuant to the twenty-third rule, for failure to print the record.

FARMERS' MIN. CO. et al. v. GOOSAW MIN. CO. (Circuit Court of Appeals, Fourth Circuit. May 11, 1897.) No. 220. Appeal from the Circuit Court of the United States for the District of South Carolina. Mitchell & Smith, for appellants. Smythe, Lee & Frost and Edward McCrady, for appellee. Dismissed, pursuant to the twenty-third rule, for failure to print record. See 75 Fed. 860.

FLORENCE MIN. & MANUF'G CO. v. MORRIS. (Circuit Court of Appeals, Sixth Circuit. February 2, 1897.) No. 490. Appeal from the Circuit Court of the United States for the Middle District of Tennessee. Dismissed, with costs, on motion of Champion, Head & Brown, counsel for appellant.

FLORIDA CENT. & P. R. CO. v. BELL et al. (Circuit Court of Appeals, Fifth Circuit. June 16, 1897.) No. 599. In Error to the Circuit Court of the United States for the Southern District of Florida. Before PARDEE and McCORMICK, Circuit Judges, and MAXEY, District Judge.

PER CURIAM. This case is substantially the same as to facts with *Oil Co. v. Bell*, 82 Fed. 113. The rulings of the trial judge, the assignments of error, and the motion to dismiss and affirm are identical. For the same reasons, the motion to dismiss and affirm is denied.

FOSTER et al. v. MYERS et al. (Circuit Court of Appeals, Eighth Circuit. September 6, 1897.) No. 877. Appeal from the Circuit Court of the United States for the District of Kansas. J. G. Hutchison, for appellants. John D. S. Cook and A. N. Gassett, for appellees. Dismissed, with costs, pursuant to the twenty-third rule, for failure to print record, on motion of appellees.

FREIBERG v. MATTINGLY CO. (Circuit Court of Appeals, Sixth Circuit. February 2, 1897.) No. 454. Appeal from the Circuit Court of the United States for the District of Kentucky. D. W. Fairleigh, for appellant. George W. Dane, for appellee. No opinion. Affirmed.

HARISTON et al. v. JARVIS-CONKLIN MORTG. CO.

(Circuit Court of Appeals, Fifth Circuit. June 1, 1897.)

No. 585.

TRUSTEE'S SALE—VALIDITY.

Appeal from the Circuit Court of the United States for the Northern District of Mississippi.

The defendants, Marshall Hariston and wife, executed their note for the sum of \$5,275, due five years after date, attaching thereto semiannual interest coupon notes. To secure the payment of these notes, they executed a trust deed to the complainant, the Jarvis-Conklin Mortgage Company, upon their plantation. Default having been made, and the trustees named in the trust deed having declined to act, the defendants, under a power contained in the deed, substituted as their trustee one W. A. Smith, who was in their employ. Smith advertised the property for sale, and, on the day of sale, he and defendant Hariston were the only bidders. Smith bid \$8,500 for the property, in the name of the Western Investment Company. The Western Investment Company was a corporation distinct from the Jarvis-Conklin Mortgage Company. The evidence showed that Smith had received no instructions from the officers of the Western Investment Company to bid for the land, and that his only instructions came from the officers of the Jarvis-Conklin Company, by whom he was directed merely to see that the property brought the amount of the debt and the costs of sale. The Western Investment Company declined to approve Smith's unauthorized bid, and the Jarvis-Conklin Company thereafter filed this bill to foreclose the trust deed. The defendants filed an answer and cross bill, claiming that the loan was usurious; that the purchase by Smith at the sale was in fact for the complainant, the Jarvis-Conklin Company, and that the Western Investment Company was a mere dummy, controlled by the Jarvis-Conklin Company; that, therefore, complainant had become the owner of the plantation, and owed the defendants the difference between the amount of Smith's bid and the true amount of the debt secured. Accordingly, they prayed for a money decree against the complainant. The material allegations of the cross bill were denied, and proofs were taken in the circuit court. That court entered a decree dismissing the cross bill, because it was not sustained by the evidence, but found that there was usury in the loan, fixed the amount due at \$4,502.75, allowed a solicitor's fee, and ordered a sale of the property. From this decree the defendants have appealed.

Wm. C. McLean and W. S. Sullivan, for appellants.
E. D. Saunders and T. M. Miller, for appellees.