

**PER CURIAM.** This case in admiralty comes up on appeal from the district court of the United States for the district of Maryland. We see no error in the decree of the district court. The same is affirmed, with costs.

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**RELIANCE NOVELTY CO. v. DWORTZEK et al.** (Circuit Court of Appeals, Ninth Circuit. October 26, 1897.) No. 387. Appeal from the Circuit Court of the United States for the Northern District of California. John L. Boone, for appellant. Isaac Frohman, for appellees. Dismissed, pursuant to the twenty-third rule, for failure to print record. See 80 Fed. 902.

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**RISTINE v. AMICONE.** (Circuit Court of Appeals, Eighth Circuit. September 27, 1897.) No. 909. In Error to the Circuit Court of the United States for the District of Colorado. Lucius M. Cuthbert, for plaintiff in error. F. B. Tiffany, for defendant in error. Dismissed, with costs, on motion of plaintiff in error.

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**ROBINSON'S ADM'R v. DETROIT & C. STEAM NAV. CO.** (Circuit Court of Appeals, Sixth Circuit. November 10, 1896.) No. 314. Appeal from the District Court of the United States for the Eastern District of Michigan. John C. Shaw, for appellant. Wells, Angell, Boynton & McMillan, for appellee. Discontinued, by consent, after the reversal of the decree dismissing the libel, and before any rehearing was had under the order of October 5, 1896, granting a rehearing. See 20 C. C. A. 86, 73 Fed. 883.

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**SABIN v. BARNETT et al.** (Circuit Court of Appeals, Ninth Circuit. October 14, 1897.) No. 366. In Error to the Circuit Court of the United States for the Western Division of the District of Washington. Cox, Cotton, Teal & Minor, for plaintiff in error. Edward F. Hunter, C. H. Forney, and Charles Richardson, for defendants in error. Dismissed, upon stipulation of parties. See 79 Fed. 947.

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**SECURITY TRUST CO. v. DODD et al.** (Circuit Court of Appeals, Eighth Circuit.) No. 916. Certified to supreme court for instructions upon certain questions, under the provisions of section 6 of the act of March 3, 1891.

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**SHIVEROCK v. R. J. GUNNING CO.** (Circuit Court of Appeals, Eighth Circuit. September 8, 1897.) No. 853. In Error to the Circuit Court of the United States for the District of Nebraska. R. S. Hall, for plaintiff in error. Charles Offutt, for defendant in error. Dismissed, with costs, pursuant to the twenty-third rule, for failure to print the record, on motion of defendant in error.

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**SWIFT et al. v. McKENDRY.** (Circuit Court of Appeals, Eighth Circuit. October 4, 1897.) No. 930. In Error to the Circuit Court of the United States for the District of Nebraska. I. R. Andrews, for plaintiffs in error. T. J. Mahoney, for defendant in error. No opinion. Motion of defendant in error to strike bill of exceptions sustained, and judgment affirmed, with costs.

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**TRUMBULL v. LOWE.** (Circuit Court of Appeals, Eighth Circuit. September 14, 1897.) No. 876. In Error to the Circuit Court of the United States for

the District of Colorado. Henry W. Hobson and Elmer E. Whitted, for plaintiff in error. Charles J. Hughes, Jr., and Tyson S. Dines, for defendant in error. Dismissed, with costs, pursuant to stipulation of parties.

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**WAGNER v. MORRIS**, United States District Judge, D. Md. (Circuit Court of Appeals, Fourth Circuit. May 14, 1897.) No. 228. Petition for mandamus to direct clerk of United States circuit court of the district of Maryland to file certain suits. John W. Clark, for petitioner. Mandamus refused, and petition dismissed.

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**WALTER BAKER & CO., Limited, v. SANDERS et al.** (Circuit Court of Appeals, Second Circuit. May 26, 1897.) No. 126. Appeal by Complainant from a Decree of the Circuit Court of the United States for the Southern District of New York.

**PER CURIAM.** The facts in this case, which deals with unfair competition in the sale of cocoa, are so nearly identical with those in the chocolate case between the same parties (No. 125; 26 C. C. A. 220, 80 Fed. 889) that it is unnecessary to discuss them. A mandate will issue in this case similar to that in No. 125.

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**WEST MICHIGAN FURNITURE CO. v. AMSTERDAMSCHIE BANK.** (Circuit Court of Appeals, Sixth Circuit. February 2, 1897.) No. 494. In Error to the Circuit Court of the United States for the Western District of Michigan. Dismissed, with costs, on motion of McGarry & Nichols, counsel for plaintiff in error.

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**YELLOW POPLAR LUMBER CO. v. PAUL**, United States District Judge, W. D. Va. (Circuit Court of Appeals, Fourth Circuit. May 6, 1897.) No. 214. John N. Baldwin, for petitioner. No opinion. Petition for mandamus dismissed, on motion of attorney for petitioner.

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**AMERICAN FREEHOLD LAND-MORTGAGE CO. OF LONDON, Limited, v. POTTER.** (Circuit Court N. D. New York. August 18, 1897.) Bill by the American Freehold Land-Mortgage Company of London, Limited, against Huldah A. Potter. Decree for complainant. P. Tecumseh Sherman and W. Pierrepont White, for plaintiff. William F. Cogswell and William N. Cogswell, for defendant.

**PER CURIAM.** This cause presents the same questions as those decided in the action against Woodworth (82 Fed. 269). A similar order should be entered.

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#### LEVIS v. CITY OF NEWTON et al.

(Circuit Court, S. D. Iowa. C. D. August 16, 1897.)

#### MUNICIPAL CORPORATIONS—USE OF STREETS—FRANCHISES—WITHDRAWAL—ORDINANCES—CONSTRUCTION.

This is a suit for injunction. The complainant, Howard C. Levis, trustee, seeks to have the authorities of the city of Newton, Iowa, enjoined from enforcing an ordinance for the removal, from the streets, of the poles and wires of the Newton Electric Company. At the hearing for preliminary injunction, a demurrer to the bill was overruled. 75 Fed. 884. Defendant appealed, and the action

of the court in granting a preliminary injunction was sustained, and the case remanded for final determination. 25 C. C. A. 161, 79 Fed. 715. Defendants again file demurrer, which is overruled, and reference made to the former decision. 75 Fed. 884.

Gatch, Connor & Weaver and James S. Cummins, for plaintiff.  
N. T. Guernsey and O. C. Meredith, for defendants.

WOOLSON, District Judge. This suit is brought by the trustee of a certain deed of trust, to enjoin the authorities of the city of Newton, Iowa, from enforcing an ordinance passed by the city council of said city. The Newton Electric Company, a corporation organized under the laws of the state of Iowa, executed its deed of trust, in favor of Howard C. Levis, as trustee, upon its electric light plant, situated in said city of Newton. The bill avers that the outstanding indebtedness secured by such deed of trust is \$10,000, and is evidenced by bonds. It is further averred that the said plant was erected under and in accordance with an ordinance duly passed by said city council, prior to the execution of said trust deed; that said city council has lately passed, under appropriate forms of law, an ordinance purporting to repeal the said ordinance, under which said plant was erected, and to authorize and direct the authorities of said city to remove the poles, wires, etc., of said plant from the streets of said city; and that, if said removal (which said city proposes to make) is thus made, the said security, in said trust deed given for the payment of said bonds, will be destroyed, etc. The prayer asks for a writ of injunction restraining said city and its authorities from attempting to make said removal, etc. A detailed statement of the contents of the bill is here not necessary. This case was before this court upon application for a writ of preliminary injunction, and, in the opinion then rendered, the contents of the bill are set out in full. 75 Fed. 884. The preliminary writ was ordered and issued. At the hearing on the application for said writ, the merits of the bill were exhaustively discussed by counsel on either side, and were considered by the court, and its decision rendered thereon. The case was then appealed to the circuit court of appeals for this circuit, where the discussion of the merits of the case as presented in the bill were again presented and discussed at length. Counsel for plaintiffs and defendants have favored me with copies of their briefs as filed on such appeal. In the opinion affirming the action of this court (25 C. C. A. 161, 79 Fed. 715), the circuit court of appeals say: "The arguments and brief of counsel invite us to a consideration of the questions of law, which must be finally determined upon a demurrer to the bill, or upon a final hearing of this case after answer. We have, however, found it unnecessary to decide these questions on this appeal, and we express no opinion upon them. They are of sufficient importance and difficulty to demand careful examination and deliberate consideration; and, whatever the ultimate answers to them may be, the preliminary injunction was rightfully issued, because it simply maintained the existing conditions, prevented irreparable loss to the appellee, and inflicted very slight, if any, loss or inconvenience upon the appellants." Defendants have now filed a demurrer, presenting the same points which were urged against the sufficiency of the bill on the hearing for preliminary writ of injunction. Upon some of the points, counsel have presented additional argument, with further citation of authorities. These have been carefully considered, but have not in any wise modified the views held by this court, and expressed in the opinion rendered upon application for the preliminary writ. It is felt that further attempt at presenting these views is useless, the same having been stated at much length in the former opinion. 75 Fed. 884. I content myself with referring thereto, and with announcing that defendants' demurrer is overruled, to which defendants except.