BOWEN v. DENTON et al.

(Circuit Court of Appeals, Fifth Circuit. January 25, 1898.)

No. 615.

FOLLOWING STATE DECISIONS.

In Error to the Circuit Court of the United States for the Northern District of Texas.

John L. Henry and De Edward Greer, for plaintiff in error.
Eugene Williams, for defendants in error.

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

PER CURIAM. The rulings attacked by the assignment of errors in this case seem to be in accordance with the decisions of the appellate courts of the state of Texas. See Robb v. Henry, 40 S. W. 1047; Bowen v. Kirkland (not yet officially reported) 44 S. W. 189. As the decisions of the highest courts of a state on the scope and effect of the state statutes of limitation controlling the possession and title of real estate are rules of property, we are disposed to follow, and not lead, in the decisions of new questions arising under the statutes of limitation of the state of Texas; and, as the judgment below seems to do substantial justice, the same is affirmed.

BRATTON v. PEOPLE'S BUILDING & LOAN ASS'N. (Circuit Court of Appeals, Fifth Circuit. January 25, 1898.) No. 624. Appeal from the Circuit Court of the United States for the Northern District of Texas. James M. Robertson, for appellant. Drew Print, for appellee. Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

PER CURIAM. The questions presented on this appeal have been ruled adversely to the appellant in this court and in the supreme court of the United States. Association v. Logan, 30 U. S. App. 163, 14 C. C. A. 133, and 66 Fed. 827; Association v. Price (decided in the supreme court of the United States Jan. 10, 1898; not yet officially reported) 18 Sup. Ct. 251. The decree appealed from is affirmed.

CITY OF BURRTON, KAN., v. ÆTNA LIFE INS. CO. (Circuit Court of Appeals, Eighth Circuit. December 13, 1897.) No. 918. In Error to the Circuit Court of the United States for the District of Kansas. Samuel R. Peters and John C. Nicholson, for plaintiff in error. W. H. Rossington, Charles Blood Smith, and E. J. Dallas, for defendant in error. Dismissed, with costs, pursuant to the stipulation of the parties. See 75 Fed. 962.

CITY OF COLUMBUS v. DENNISON. (Circuit Court of Appeals, Fifth Circuit. January 17, 1898.) No. 450. In Error to the Circuit Court of the United States for the Northern District of Mississippi. Dismissed, for failure to print record. See 62 Fed. 775; 16 C. C. A. 125, 69 Fed. 58.

CITY OF DENVER v. BARBER ASPHALT PAVING CO. (Circuit Court of Appeals, Eighth Circuit.) No. 902. In Error to the Circuit Court of the United States for the District of Colorado. Application to the supreme court for a writ of certiorari. See 83 Fed. 1020.

CLYMER et al. v. BOWEN. (Circuit Court of Appeals, Fifth Circuit. January 25, 1898.) No. 614. In Error to the Circuit Court of the United States for the Northern District of Texas. This was an action by R. D. Bowen against J. M. Clymer and others to try the title and recover the possession of certain lands described in the pleading. At the first trial the court instructed the jury to render a verdict for the defendants, but on a writ of error the judgment entered was heretofore reversed by this court (24 C. C. A. 446, 79 Fed. 53), and the case was remanded, with instructions to grant a new trial. On the second trial there was a verdict and judgment for plaintiffs, and the defendants sued out a writ of error. J. G. Matthews, for plaintiffs in error. De Edward Greer and John L. Henry, for defendant in error. Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

PER CURIAM. This is the second writ of error in this case, and presents no questions not considered in the first writ. On the last trial in the circuit court the case seems to have been submitted on substantially the same evidence as on the first trial, and the rulings of the trial judge on the questions presented and now assigned as erroneous were in conformity with the views expressed by this court on the first writ. Bowen v. Clymer, 24 C. C. A. 446, 79 Fed. 53. The equitable defense presented on the first trial was somewhat accented on the last; but no question is raised thereby which we can now consider. As we find no sufficient reason to change our views as to the law applicable, the judgment of the circuit court must be affirmed, and it is so ordered.

COCKRILL v. UNITED STATES NAT. BANK. (Circuit Court of Appeals, Eighth Circuit. November 23, 1897.) No. 984. In Error to the Circuit Court of the United States for the Eastern District of Arkansas. Removed to the supreme court on writ of error. See 82 Fed. 1000.

DARRAGH v. H. WETTER MFG. CO. (Circuit Court of Appeals, Eighth Circuit. November 10, 1897.) No. 766. Appeal from the Circuit Court of the United States for the Eastern District of Arkansas. Removed to supreme court on appeal. See 23 C. C. A. 609, 78 Fed. 7.

Ex parte DAWSON. (Circuit Court of Appeals, Eighth Circuit.) No. 908. Appeal from the District Court of the United States for the Western District of Arkansas. Application to supreme court for a writ of certiorari. See 83 Fed. 306.

DE LA VERGNE REFRIGERATING MACH. CO. v. GERMAN SAVINGS INST. et al. (Circuit Court of Appeals, Eighth Circuit. January 31, 1898.) No. 974. In Error to the Circuit Court of the United States for the Eastern District of Missouri. Charles H. Aldrich and Frederick W. Lehmann (W. F. Boyle and H. S. Priest, on the brief), for plaintiff in error. B. Schnurmacher (Leo Rassieur, on the brief), for defendants in error. Before SANBORN and THAYER, Circuit Judges.

PER CURIAM. The judges are divided in opinion upon the question whether or not the contract which is the basis of this action was ultra vires the De La Vergne Refrigerating Machine Company, and are of opinion that the other questions presented should be determined in favor of the defendants in error. The judgment below is therefore affirmed by a divided court. See 17 C. C. A. 34, 70 Fed. 146.