

S. App. 676, 689. System, order, and the uniform application of the laws, the rules, and the practice to all litigants alike, are as essential to the administration of justice in the land department as in the courts. Doubtless every applicant for this land, but one, relied upon the settled practice of the department, and presented his application for it at 9 o'clock in the forenoon on February 23, 1889; yet that one who violated the rule and practice, and made application to the officers out of office hours, and before the land was open for entry under the practice of the department, has defeated all the others. He who came in by some other way has defeated every applicant who came "by the door." What a farce the attempt to secure rights in any judicial tribunal must become, if its rules and practice are ignored or applied at the arbitrary will of the judge who presides over the court! Under such an administration of the land department, the rights and titles which the law attempts to protect and secure would become naught but privileges dependent upon the gracious favor of its officers. The power to degrade them to this rank cannot be found in the supervisory authority of the secretary or of the commissioner. Their power of supervision is not unlimited or arbitrary. "It cannot be exercised so as to deprive any person of land lawfully entered and paid for. By such entry and payment the purchaser secures a vested interest in the property, and a right to a patent therefor, and can no more be deprived of it by order of the commissioner than he can be deprived by such order of any other lawfully acquired property. Any attempted deprivation in that way of such interest will be corrected whenever the matter is presented so that the judiciary can act upon it." *Cornelius v. Kessel*, 128 U. S. 456, 461, 9 Sup. Ct. 122; *Bogan v. Mortgage Co.*, supra. The decree below must be reversed, and the case must be remanded to the court below for further proceedings not inconsistent with the views expressed in this opinion.

GOSS PRINTING-PRESS CO. v. SCOTT.

(Circuit Court, D. New Jersey. December 11, 1896.)

WITNESS—EVIDENCE TO SHOW INTEREST IN SUIT—RIGHT TO REQUIRE PRODUCTION OF PRIVATE PAPERS.

A witness cannot be compelled on cross-examination to produce contracts between himself and the adverse party, containing matters of a private nature, nor to disclose their contents, on the ground that they will disclose the nature and extent of his interest in the litigation, when it is admitted on the record, by the party producing him, that he has a substantial financial interest in the result of the suit.

Motion for a rule upon a witness to require him to produce certain documents, and to answer questions relating thereto.

C. E. Pickard, for complainant.

W. H. L. Lee, for defendant.

KIRKPATRICK, District Judge. The facts in this case are undisputed. It appears that Joseph C. Firm was called as a witness

for the defendant, and afterwards, in rebuttal, was examined on the part of the plaintiffs. Upon cross-examination it was shown that he had made three agreements with the plaintiff company respecting royalties, or payments in lieu thereof; he being the inventor, and the plaintiffs his assignees. The defendant sought to compel the production of these agreements, upon the ground that they were material to show the extent of the witness' interest in the suit, and the exact nature thereof. Witness, by advice of counsel, refused to produce the agreements, and the motion now is to compel him to do so. The defendant's counsel states that it clearly appears by the evidence in the cause, and it is admitted, for the purpose of this suit, by the counsel for the plaintiffs, that the witness is financially interested to a substantial extent in the outcome of the litigation; and upon the hearing of the motion an affidavit was filed setting out that matters of a private nature were contained in the agreements between the witness and the plaintiff corporation. I am therefore of the opinion that the witness should not be compelled to produce them. The interest of a witness in the subject-matter of a controversy may be shown to affect his credibility, but it does not follow that the weight to be attached to his evidence varies with the amount of his interest. The defendant, not being entitled to the production of the within agreements, cannot seek the disclosure of their contents by oral testimony. The motion of the defendants is denied.

NATIONAL BANK OF ASHEVILLE v. FIDELITY & CASUALTY CO. OF
NEW YORK.

(Circuit Court of Appeals, Fourth Circuit. November 1, 1898.)

No. 267.

1. TRIAL—SUBMISSION TO JURY OF SPECIAL ISSUES.

It is not reversible error, under the practice in North Carolina, to refuse to submit to the jury an obscurely worded special issue tendered, where such issue is fairly submitted, and more fully and clearly stated in the general charge of the court.

2. SAME—INSTRUCTIONS—CONSTRUCTION.

An expression used in an instruction, or a special issue submitted, though in itself susceptible of two meanings, is not misleading when, as applied to the evidence, its meaning is plain.

3. SAME—SPECIAL FINDINGS—CONSTRUCTION.

Though a special issue submitted to a jury may be somewhat ambiguous, the validity of a judgment based thereon is not affected where the answer to a second issue, submitted with it, makes the actual finding of the jury under the former plain.

4. FIDELITY INSURANCE — LIABILITY OF SURETY — CONCEALMENT OF FACTS BY EMPLOYER.

While under a bond insuring the fidelity of an employé, which requires the employer to make disclosure of any dishonesty of the employé known to him, the employer is not bound to use diligence to discover such dishonesty, yet where, in the exercise of ordinary and reasonable care and prudence in giving attention to facts known to him, he could not have failed to draw the inference that the employé was a defaulter, he may properly be charged with knowledge of such fact.¹

¹ As to fidelity insurance generally, see note to Indemnity Co. v. Wood, 19 C. C. A. 273.