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DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C.,

July 2, 1894.

ADDRESS ONLY THE
COMMISSIONER OF THE GENERAL LAND OFFICE.

Okla. T.S.D., case 154.

William Innis,)

vs.)

Newman J. Burton.)

) Involving title to lot 3, block
) 24, Edmond, Oklahoma Territory.

Townsite Board No. 2,

Oklahoma City, Oklahoma.

Gentlemen:

On January 13, 1891, William Innis filed with your board his application for a deed to lot No. 3, Block 24, in the town of Edmond, Oklahoma, alleging his occupancy of it, together with the improvements made thereon and his qualifications as a settler. On January 20, 1891, Newman J. Burton filed with your board his application for a deed to said lot, alleging that he is an occupant of said lot and has had the possession of the same for over twelve months, and that he is a qualified settler thereon. A contest for said lot hav-

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ing been instituted you set the same for hearing April 24, 1891, at which time the parties to said contest with their witnesses appeared and submitted their testimony, and on June 3, 1891, a majority of your board decided said case in favor of Burton. On June 31, 1891, Innis appealed from said decision to this office, alleging in substance as the grounds for his appeal, that the decision is contrary to law and the evidence in the case. It appears that Innis settled on the lot in dispute in May, 1889, that during the summer of said year he built a house on said lot of the value of from \$40 to \$60 and rented it to one Granthum who had possession of it and held it until November of said year. During the time Granthum was in the possession of said lot as tenant of Innis, he employed Burton to sell harness for him. Burton was part of the time in the house with Granthum and part of the time on the road selling harness. In November, 1889, Granthum left said premises and left Burton in possession thereof. It further appears that Burton paid rent for several months after he was in the sole possession of said lot, to the agents of Innis, without objection, except that he claimed the rent was too high, and asked the agent to reduce it. Burton admits that

he paid rent for said premises but claims that he paid it under duress and protested against it. The agents of Innis who collected this rent deny that Burton protested against paying it, or that he ever claimed said premises as his. It further appears that during the time Burton was in possession of said lot Innis caused a pavement to be made along the front of said lot of the value of \$15. There is no evidence tending to show that Burton made any improvements on said lot except what he received credit for in the payment of rent. It further appears that Innis' health failed during the fall of 1889, and by reason thereof he left said Territory and went to Denver, Colorado. He again returned to Edmond in February, 1890, remained there a week or two, then went back to Denver where he has remained ever since. Innis is an unmarried man and was over the age of 21 years when he took possession of said lot, and is a citizen of the United States. Edmond was entered by the townsite trustees December 12, 1890.

It is claimed by Burton that Innis is not a resident of Oklahoma Territory, and was not in the occupancy of said lot at the time the land for the townsite was entered, and that he has abandoned said lot. Burton further claims that he

in possession of said lot for 12 months before the townsite entry was made, has been in possession ever since, and has used it for trade and business and, therefore, he should receive a deed for it. It is not shown definitely how long Burton paid rent for said premises nor when he refused to pay, but there is some testimony tending to show that he paid it to July or August, 1890. I find that Innis was the first occupant of said lot and improved it by building a small house thereon; that he rented the house to Granthum for a business house, and that when Granthum left said house, he left it in possession of Burton; that Burton continued the tenancy commenced by Granthum by remaining in said house and paying rent for the same to Innis. There is no evidence to show that Burton ever claimed the right to hold said lot until after the land was entered for a townsite, and then he did not notify Innis, nor any of his agents of his intention to do so. His possession of said lot was continuous from the time he first took possession until he applied for a deed. It is a well established principle of law that the tenant cannot successfully dispute the title of his land lord. His possession is the possession of the landlord, and without

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some break in the occupancy, showing an abandonment by Burton of his original possession of said lot, the tenancy continued to exist between said parties, and Burton's possession was not adverse to the rights of Innis. I find that Innis is entitled to a deed for said lot. The application of Burton is rejected, and the decision of your board is, therefore, reversed.

You are ordered, in case no appeal is taken from this decision, and when the case is closed by this office, to execute and deliver to said Innis a deed for said lot.

Notify the party and appellee of his right of appeal.

Very respectfully,

Commissioner.