

54 F. 819, 4 C.C.A. 596

(Cite as: **54 F. 819**)

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Circuit Court of Appeals, Fifth Circuit.

WINEMAN

v.

GASTRELL.

No. 20.

January 11, 1893.

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

In Equity. Bill by Lucy E. Gastrell against Marx Wineman to remove cloud from title. A decree was given for complainant, which, on appeal by respondent, was affirmed. See 53 Fed.Rep. 697, where a full statement of the case will be found. Respondent now petitions for a rehearing. Denied.

***819** Frank Johnston, for appellant.

A. M. Lea, for appellee.

***820** Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District judge.

PER CURIAM.

In this petition for a rehearing there is no point raised which had not been carefully and fully examined and considered. The grant of 35,000 acres of land was a public law, standing upon the statute books of the state. The land was described as '35,000 acres of swamp land located in the Homochitto swamp, ' and at the time of the purchase by appellant there was not that amount of land of that description standing upon the books of the land department, and for appellant to plead want of notice he has to ignore the existence of the grant by which this land, identified sufficiently to demand notice, had been conveyed by his grantor to other parties. In [Van Wyck v. Knevals, 106 U.S. 360, 1 Sup.Ct.Rep. 336](#), although no patent had been issued, nor any notice of the withdrawal of the

land received, yet it was held that the title had passed out of the United States by the grant. Every point urged in the petition has been carefully considered, and, being satisfied that the case has been so fully and thoroughly argued that nothing further could be urged that could change the conclusion of the majority of the court, the petition must be denied.

C.A.5 1893.

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