

**JARRELL V. BARNETT, 1897-NMSC-025, 9 N.M. 254, 50 P. 318 (S. Ct. 1897)**

**JAMES S. JARRELL, Appellant,  
vs.  
R. F. BARNETT, ASSIGNEE OF W. C. BIRD & CO., Appellee**

No. 675

SUPREME COURT OF NEW MEXICO

1897-NMSC-025, 9 N.M. 254, 50 P. 318

October 02, 1897

**Appeal**, from a decree for respondent, from the Fifth Judicial District Court, Chavez County.

The facts are stated in the opinion of the court.

**COUNSEL**

James A. Poage for appellant.

The decree of reference is the limit of the special master's authority, and a finding by him on a matter not referred, and not raised in the pleading, should be ignored as null.

The assignment contains a recital of uncontradicted facts. *Maury v. Lewis*, 10 Yerg. (Tenn.) 115; *Rawson v. Rawson*, 2 Johns. Ch. 495; *Simmons v. Jacobs*, 52 Me. 14; *Levart v. Red Wood*, 9 Port. (Ala.) 79; *White v. Walker*, 5 Flor. 78; 1 Black on Judg., sec. 44, note 101; 2 Id., sec. 641; Id., secs. 530, 532.

The special master had found that \$ 112.38 of the claim was originally for rent, but it had been paid prior to the decree of reference, and prior to its allowance and approval by appellee. See authorities cited, supra.

For scope and duties of master see same cases.

In the judicial character of assignee's acts in allowing claims, and its force as res adjudicata, see *Insolvent Laws*, N.M. 1889, pp. 150-161, secs. 19-23, 36; *Rubber Co. v. Good-year*, 9 Wall. (N. Y.) 788; *State v. Ins. Co.*, 5 Pac. Rep. 190; *Eureka Co. v. Bailey Co.*, 11 Wall. (U.S.) 488; *Martin v. Mott*, 12 Wheat. 19; *Steele v. Smelting Co.*, 106 U.S. 47; 14 Am. and Eng. Ency. of Law, head "Master in Equity;" *Epright v. Kauffman*, 1 S. W. Rep. 736.

**JUDGES**

Laughlin, J. Smith, C. J., and Bantz and Collier, JJ., concur.

**AUTHOR:** LAUGHLIN

### **OPINION**

{\*255} {1} The appellant and complainant below, James S. Jarrell, filed his bill of complaint against appellee, respondent below, R. F. Barnett, as assignee of W. C. Bird & Co., and prayed that the sum of \$ 112.38 be declared a preferred lien by appellee, as assignee of said Bird & Co.'s estate, as a landlord's lien for rent of a building at Roswell, rented by said Jarrell to said Bird & Co. for use as a saloon.

{2} Bird & Co. failed, and made an assignment to said Barnett. Issue was joined by answer and replication, and the case was then referred to C. A. Keith, Esq., as special master, and he reported to the court that all the rent had been paid, and that nothing was then due from said Bird & Co. to said Jarrell. The special master was directed by the court to take the proofs in the case on the issues joined, and find, first, "the amount due plaintiff for rent up to the time of the bringing of the suit." The special master found and reported as a fact that Bird & Co. paid complainant, Jarrell, all money due him before the time of the filing of this suit, and the court below confirmed the report, and entered a decree accordingly. The case was referred to the special master by consent of all parties, and his findings on the disputed facts on the evidence produced before him have the same force and effect as the special verdict of a jury. *Field v. Romero*, 7 N.M. 630, 41 P. 517; *De Cordova v. Korte*, 7 N.M. 678, 41 P. 526. There is nothing else to be considered in this case. The judgment of the court below is affirmed.