expenses of the plaintiffs in attending upon the trial of the case. The only question at issue in this case was whether or not the plaintiffs were entitled to make these deductions, or whether they were compelled to credit on the indebtedness of Mrs. Charlotte T. Coley the full amount recovered in the trover case against J. A. D. Coley.

Hill & Harris and *J. A. Thomas*, for plaintiffs, cited Ga. Code, § 2146; 14 Amer. Law Rev. 697; 10 Cent. Law J. 237.

Lanier & Anderson, for defendants.

LOCKE, J., (*charging jury.*) The only question of law which arises in this case is in regard to the allowance of the expenses of the trover suit prosecuted by the plaintiffs against J. A. D. Coley. If you believe from the evidence that the collateral notes which had been delivered to Hurst, Miller & Co. were returned to J. A. D. Coley as agent of Charlotte T. Coley, and as the original holder of said notes, because he was her agent, and in fulfillment of an agreement and understanding had with him as her agent at the time of the delivery of them to the agent of Hurst, Miller & Co. for collection, and that the bringing of this suit was reasonable and necessary to protect the interests of Hurst, Miller & Co., and that the amounts were reasonable and just, and actually expended, you will find for the full amount sued for; but if you believe that said notes were delivered to J. A. D. Coley as agent of Hurst, Miller & Co., and not at all on account of J. A. D. Coley's connection with Charlotte T. Coley as her agent, and not as agent of Charlotte T. Coley, or that the suit against J. A. D. Coley was unnecessary and consequently unjust, you will find for the plaintiffs simply the amount due on the original indebtedness, less the actual amount received by them on the judgment against J. A. D. Coley.

ST. LOUIS SMELTING & REFINING CO. *v.* WYMAN.

(*Circuit Court, D. Colorado.* October 16, 1884.)

EJECTMENT—ERROR TO SUPREME COURT—SUPERSEDEAS BOND—RENTS AND PROFITS.

A *supersedeas* bond in an ejectment case covers rents and profits accruing pending the proceedings in error to the supreme court.

At Law.

BREWER, J., (*orally.*) In No. 1,156, *St. Louis Smelting & Refining Co.* v. *Wyman*, the facts are these: Plaintiff obtained a judgment in ejectment. Defendant took the case to the supreme court of the United States, and gave a *supersedeas* bond. Judgment was affirmed, and the question is whether that bond covers the value of the use and occupation, or the rents and profits, of the land subsequent to the judgment in the circuit court, and before the affirmance in the supreme

court. But for language to be found in one or two opinions of the supreme court, I do not think there would be the slightest question.

The section of the statute, which is in Desty, (section 1000,) provides that every justice or judge signing the citation shall take good and sufficient security that the plaintiff in error shall answer all damages and costs where the writ is a *supersedeas*. That he shall answer *all* damages! Now, when the judgment is entered in the circuit court, the right of the plaintiff to the possession of the property is established. He is entitled to the immediate possession, and to the rents and profits that thereafter shall arise therefrom. If by proceedings in error and a *supersedeas* bond he is deprived of that possession, and so, pending the proceedings in error, loses those rents and profits, certainly he is damaged to that extent; and if the *supersedeas* bond is to answer all damages, it should answer for those rents and profits. I do not see any logical escape from that reasoning.

The supreme court have made a rule under that section intending to carry it into effect. I do not think by any rule they can limit the scope of that section, or nullify its operation; and while I have as enlarged notions, perhaps, as any one as to the powers of a court, especially the supreme court, I do not think they can go far enough to nullify any of the acts of congress. It is unnecessary, perhaps, to turn to the rule. It attempts to specify the form of the bond, and what it shall answer; and in the case of *Omaha Hotel Co.* v. *Kountze*, 107 U. S. 378, S. C. 2 Sup. Ct. Rep. 911, a majority of the court held that a *supersedeas* bond in a foreclosure case did not cover the rents and profits of the realty mortgaged accruing pending the proceedings in error. A very lengthy and elaborate opinion was filed by Mr. Justice BRADLEY. In it he intimates that the same rule might apply in ejectment cases, but does not distinctly say so, and draws a distinction between ejectment and foreclosure cases, in that in the latter the complainant can protect himself by a receiver. Even in that case, the only two members of the court who were members at the time the rule was announced, Messrs. Justices FIELD and MILLER, dissented, and dissented in a very vigorous opinion on the part of Judge MILLER.

While, I say, there is an intimation in that opinion that the same rule might apply in an ejectment case, it is not so decided. A distinction is drawn between ejectment and foreclosure cases, so that, notwithstanding that intimation, I think that I ought to follow what seems to be, to my mind, the clear and unanswerable logic, and that is to hold that a *supersedeas* bond in an ejectment case covers rents and profits accruing pending the proceedings in error. So, in accordance with the stipulation which was filed, judgment will be entered in favor of the plaintiffs for $2,000.

EASTERN TOWNSHIPS BANK *v.* VERMONT NAT. BANK OF ST. ALBANS and another.

(*Circuit Court, D. Vermont.* October 22, 1884.)

BANKS AND BANKING—LOAN—FAILURE OF BANK—PAYMENT.

A., the president of defendant, a national bank in Vermont, applied to the plaintiff, a banking corporation in Canada, for a loan for his railroad of $50,000, which he had been unable to obtain from defendant. Plaintiff's manager told him the money could not be loaned as an individual loan, as its individual loans were too near the limit allowed by law, but that it would deposit that amount with defendant if desired. A. assented, and they agreed the deposit should draw interest at 6 per cent. while it remained, and that bonds should be deposited as security. Plaintiff drew two drafts for the amount on a Boston bank, delivered them to defendant and received the collaterals, and entered the transaction on its books as a loan to defendant. Defendant indorsed the drafts, forwarded them to the Boston bank, from which it received credit for them, and has always retained their avails. About a year afterwards defendant failed, and a receiver was appointed, who rejected the claim of plaintiff when presented for payment, and defendant brought suit. *Held*, that the transaction was not a loan to A. individually, but to defendant; that plaintiff was entitled to a judgment, to be paid by the comptroller from the assets ratably with other claims; and that the amount due should be adjusted as of the time when the receiver was appointed, and so certified by the receiver to the comptroller, to be paid in due course of administration.

At Law.

Edwards, Dickerman & Young and *George F. Edmunds*, for plaintiff.

George W. Hendee and *Luke P. Poland*, for defendant.

WHEELER, J. This cause has, on stipulation of the parties in writing, been tried by the court. The plaintiff is a corporation located and doing banking business at Sherbrooke, Canada. The defendant was organized as a national bank under the laws of the United States, and located at St. Albans, Vermont. It had seven directors, one of whom resided in Montreal, Canada, and took no active part in its business. Its president owned about three-fourths of its capital stock, and was largely interested as owner of stocks and bonds in several railroads in Canada and the United States. These railroad companies were largely indebted to the defendant on paper indorsed by him, and he was individually so indebted on his own paper. As the railroad enterprises turned, the railroad companies, the president, and the defendant were badly insolvent. As was within fair expectation, they were solvent, and were supposed to be so. The president wanted $50,000 to use, and could not be accommodated with that amount by the defendant. He applied to the manager of the plaintiff, at its banking-house in Sherbrooke, for a loan of that amount, and proposed to put up bonds of one of the railroads as collateral, and probably stated that defendant had not funds from which to make the loan as a reason for applying to the plaintiff. The manager of the plaintiff told him that it had funds sufficient from which