dispute is concerned. The jurisdiction, when dependent upon the amount in dispute in case of appeal or writ of error, is determined by a different standard. There the test is the amount in dispute at the time the appeal is taken. Where the declaration shows the requisite amount is demanded, this court has jurisdiction."

1. In the case of *Armstrong* v. *Ettlesohn*, 36 Fed. Rep. 209, decided in 1888, the declaration had three counts: (1) Upon a promissory note, $875; (2) money had and received, $875; (3) work and labor done, $875. Upon demurrer of defendant, and motion to dismiss for want of jurisdiction, on the ground that the plaintiff had only one right of action, and could recover only on one count, the court held that, upon the face of the declaration, which could only be considered upon demurrer, there appeared three causes of action, aggregating more than the jurisdictional amount. The court overruled the demurrer, saying, if it should afterwards appear that there was only one cause of action, the case would be dismissed. In the case at bar each count sets forth a separate cause of action, which, when taken in connection with the *addendum* clause, clearly gave this court jurisdiction as to the matter in dispute; and having acquired jurisdiction upon a well-established principle, prior to the act of 1875, this court could proceed to judgment. But it is contended that, the plaintiffs having filed a bill of particulars under the first count for $405.50, a sum less than $500, they were bound by that, and could introduce no proof as to the other counts, and that this court must now presume that to be the only cause of action, and that the sum in dispute was really less than $500. The plaintiffs were entitled to amend their bill of particulars, and, by leave of the court, introduce evidence to sustain the other counts. McClel. Dig. p. 834, §§ 96, 97. There was a trial of the cause before a jury, and a judgment was entered on the 7th day of December, 1869, for $416.04, and it is to be presumed that the question of jurisdiction was then determined. This court will not, at this late day, say that the court who tried the cause was so remiss in its duty as to allow judgment to be entered in a cause in which the court had no jurisdiction. If the plaintiffs had declared solely upon the court for goods sold and delivered for $405, concluding with the averment that they had sustained damages of $1,000, it would be entirely a different case from the present one, and the court would be justified in holding that there was no jurisdiction as to subject-matter. It is contended by the complainants that the court had no jurisdiction of the person of the defendant John T. Matthews, because the return upon the original writ was made in the name of a special deputy United States marshal, and not in the name of the marshal. There was personal service upon the defendant, and the making of the return in the name of the deputy was, at the most, only an irregularity which the defendant above could take advantage of in the original proceedings, and cannot be raised by strangers to the judgment. I am of the opinion that the court had jurisdiction both of the subject-matter and the person of the defendant.

2. By reference to the judgment roll, it can be readily determined in whose favor the judgment is rendered and execution issued, and it is immaterial that the individual names of the plaintiffs are not fully set

forth in the judgment, and the variance in setting out the names in the execution is not fatal. The judgment and execution are legal and valid.

3. It is admitted that the defendant in execution, John T. Matthews, owned and was in possession of the land in question on the 16th day of March, 1868. Complainants allege that on that day said property was purchased at tax-sale by one Stephen McCall; that he received a tax-deed for the same; and that he went into immediate possession of the property; and that complainants claim under him. The only proof offered to sustain this allegation is a certified copy of a purported tax-deed, purporting to have been executed on the said 16th day of March, 1868, and which was spread upon the public records of Alachua county, where the land is situated, without ever having been acknowledged or proven for record, as required by the laws of the state. It has long been held that an attempted record of this character is no record, but a nullity. *Townsend* v. *Edwards*, (Fla.) 6 South. Rep. 212. This certified copy is not admissible in evidence for any purpose whatever. The complainants have failed to show that the title to the property has ever passed out of Matthew's hands, the defendant in execution; moreover, it was established that Matthews was in actual possession of the property at the date of the judgment, and for more than two years thereafter, and the tax-deed, never having been legally recorded under the laws of this state, was not notice to subsequent creditors or purchasers without actual notice. *Carpenter* v. *Dexter*, 8 Wall. 532; *Doyle* v. *Wade*, 23 Fla. 90, 1 South. Rep. 516. The judgment lien of the defendants is superior to the unrecorded tax-deed, admitting that there was such a deed, which was not established by legal evidence.

4. The fact that the complainants, and those under whom they claim, have been in the actual possession of this property for more than seven years, the statutory period, does not defeat the defendants' judgment lien. A judgment lien is on the same footing with a mortgage lien, and it will not be contended that adverse possession for seven years will defeat a mortgage lien.

5. When the complainants purchased this property, and improved it, they were bound to take notice that the pretended tax-deed had never been recorded, and that the defendants' judgment stood unsatisfied upon the records of the court. The maxim, *caveat emptor*, applies. One of the complainants swears that he knew that Matthews was in possession of the property as late as 1871. The question of laches must be determined to a great extent upon the facts of each case. In this case the court is of the opinion that the defendants are not guilty of laches in not attempting to execute their judgment at an earlier day, because the testimony discloses the fact that there were a large number of other and abler judgments creating liens against the property, amounting to more than its value, and defendants could not safely proceed to execute their judgment until these prior liens had been extinguished; moreover, it appears that the complainant Hill had purchased a large amount of these liens, and was holding them against the property, or, at least, the interest, of his co-tenant therein, with the evident intention of protecting and

strengthening his title thereby. It seems to the court that the complainants knew that their title was defective, and thus sought to perfect it, and cannot, in any sense, be considered purchasers, and entitled to the relief they seek. The bill must therefore be dismissed.

NATIONAL BANK OF RONDOUT v. MCGAHAN *et al.*

(Circuit Court, D. South Carolina. 1891.)

APPEAL—SUPERSEDEAS BOND—AMOUNT—FORECLOSURE SUIT.

Where a decree in foreclosure directs defendant to account for three-fourths of the rents of the property for several years, and for waste committed during that time, and the judgment for which this accounting is ordered amounts to $13,000, with interest for two years or more, the *supersedeas* bond will be fixed at $14,000, as the case is not within rule 29 of the supreme court, directing that, in suits on mortgages, the *supersedeas* bond shall be fixed at a sum to cover the damages arising from the detention of the money secured by the mortgage, measured by the interest on the money.

In Equity. Motion to fix the amount of *supersedeas* bond.

Barker, Gilliland & Fitzsimons, for complainant.

I. N. Nathans and *Samuel Lord*, for defendants.

SIMONTON, J. If the decree in this case provided simply for the foreclosure of a mortgage of real estate, the amount of the bond would be fixed at a sum to cover the damages arising from the detention of the money secured by the mortgage, measured by the interest on the money due. *Construction Co.* v. *Township of Cherokee*, 42 Fed. Rep. 754. That is the course laid down in rule 29 of the supreme court in "all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages." But the decree orders the defendant to account for three-fourths of the rents and profits of said property from 7th September, 1883, and for any waste permitted by him of the said property between that date and the date of his accounting." This part of the decretal order takes the case out of *Kountze* v. *Hotel Co.*, 107 U. S. 394, 2 Sup. Ct. Rep. 911, and out of this part of rule 29. The limit of this liability to account is the amount of the judgment heretofore secured by the complainant, some $13,000, with interest from 1887. From the evidence taken in the cause, and submitted to the court, (the judge hearing this motion not having sat on the trial,) it appears that the land covered by the mortgage owed its chief value to the timber upon it, and that this has nearly all been cut away. Besides this, it is manifest, from the tenor of the decree, that the presiding judge was under the impression that the land was not a sufficient security for the debt. Not only does he order this accounting in aid of the complainant, but he directs the proceeds of sale, costs, and expenses, being deducted, to be paid over to the complainant, and