

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

credited on the debt. No provision is made for the surplus, and apparently no surplus is anticipated. Under these circumstances, I fix the amount of the *supersedeas* bond at \$14,000.

APPLETON *et al.* v. ECAUBERT.

(Circuit Court, E. D. New York. March 12, 1891.)

DEPOSITIONS—CONSIDERATION OF EXCEPTIONS.

Where in a suit in the circuit court of the United States under Rev. St. U. S. § 4918, to have an interfering patent declared void, a special examiner, duly appointed, is taking depositions in Washington to be used in the suit, the examination will not be stopped on motion for the court to pass on exceptions to the evidence, so as to save expense. It is the rule of the court to allow the exceptions to be noted by the examiner so they may go to the supreme court in the record in case of appeal from the ruling of the circuit court thereon.

In Equity. Bill to avoid interfering patents.
Church & Church, for complainants.
Francis Forbes, for defendant.

LACOMBE, Circuit Judge. This is a suit in equity, brought under section 4918, Rev. St. U. S., which provides "that whenever there are interfering patents * * * the court [in such suit] * * * may adjudge and declare either of the patents void in whole or in part," etc. A special examiner to take testimony in the city of Washington, D. C., was duly appointed, and on the 27th and 28th days of January one William Burke, an examiner in the patent-office, was examined on behalf of the complainants, but not cross-examined; his further examination, together with that of other witnesses, being adjourned to await the determination of the motion now before the court. The examination of the witness Burke is directed to occurrences in the patent-office before the issue of the patent, and it is contended by the defendant that such testimony is collateral, irrelevant, and not pertinent to the issues raised in this case. It is the intention of the complainants, upon the completion of the deposition of Burke, to take further testimony of a similar character, and in the same way, viz., by depositions of witnesses called to testify before the special examiner.

The defendant applies for an order directing the suppression of the deposition of Burke, already taken, and further directing "the complainants or their counsel to desist from further questions of a similar character." The theory of the defendant is that, because the testimony which it is proposed to take "will consume considerable time in the taking, it would be a saving of expense to the parties to have the questions passed upon by the court prior to such examination." And, further, that it would be "just and fair to the defendant to pass upon the materiality of the questions propounded on the direct examination before the opportu-