

ness of the location of the granted lands by the officers of this government whose duty it was to locate them. *Smelting Co. v. Kemp*, 104 U. S. 645; *French v. Ryan*, 93 U. S. 169; *Marquez v. Frisbie*, 101 U. S. 475; *U. S. v. Atherton*, 102 U. S. 372; *U. S. v. Schurz*, Id. 404; *Patterson v. Tatum*, 3 Sawy. 172; *Chapman v. Quinn*, 56 Cal. 266. Those are questions with which defendants can have nothing to do. In respect to lands so patented it is impossible that any question under the homestead laws of the United States can arise, so long as the patent stands, for those laws apply only to the lands of the government. The issue as to whether or not the lands in controversy in this suit are embraced by the grant to De Celis, as defined in the patent, presents no federal question. It merely involves the location of the boundary lines. These views render it unnecessary to consider the technical objections made to the bond. An order will be entered remanding the case to the state court from which it came, at the cost of the parties bringing it here.

CAMPBELL PRINTING-PRESS & MANUF'G CO. v. MANHATTAN EL. RY. CO.

(Circuit Court, S. D. New York. November 7, 1891.)

EQUITY PRACTICE—MOTION FOR DECREE ON BILL AND ANSWER.

Application for a decree upon bill and answer must be made, not at chambers, but at the equity term after the cause is put upon the calendar.

In Equity. Suit by the Campbell Printing-Press & Manufacturing Company against the Manhattan Elevated Railway Company for infringement of a patent. On motion for an injunction *pendente lite* and for a decree for an accounting. Denied.

The patent in question in this case is No. 401,680, issued April 16, 1889, to Edward S. Boynton, assignor of the complainant, for an improvement in valves for pneumatic pipes or tubes. A motion for a preliminary injunction was denied by Judge LACOMBE, (47 Fed. Rep. 663,) and the defendant then filed its answer, admitting the validity of the patent in suit, title, and infringement, but denying that it had ever made any gains or profits by reason of its unlawful use of the patented devices, and also denying that it had thereby damaged the complainant except nominally. To this answer a general replication was filed; and thereafter complainant moved, upon the bill, answer, replication, and all proceedings had, for an order directing that defendant be enjoined *pendente lite*; and for a decree for an accounting pursuant to the prayer of the bill; and for such other and further relief as to the court might seem just.

Charles De Hart Brower and *Philip R. Voorhies*, for complainant.

Davies, Short & Townsend and *Maynardier & Beach*, for defendant.

BROWN, J. The settled practice of this circuit is that, upon a bill and answer, application for judgment must be made, not at chambers, but at

the equity term after the putting of the cause on the calendar. This may be done on short notice, after evidence of such damages has been taken as would warrant sending the cause to the commissioner. Motion denied, without prejudice.

J. L. MOTT IRON-WORKS v. STANDARD MANUF'G CO.

(Circuit Court, W. D. Pennsylvania. December 12, 1891.)

DEPOSITIONS—FILING—STIPULATIONS.

When the parties to an equity cause stipulate that testimony may be taken before any officer or magistrate, qualified to administer oaths, without special appointment by the court as an examiner, the depositions thus taken must be filed of record, as required by equity rule 67, in cases where an examiner is regularly appointed; and the party in whose behalf the testimony was taken has no right to suppress it.

In Equity. Suit by the J. L. Mott Iron-Works against the Standard Manufacturing Company. Heard upon motion to compel the filing of depositions. Motion granted.

Connolly Bros., for the motion.

Francis Forbes, opposed.

REED, J. It appears that, by stipulation between counsel for the parties, it was provided that testimony on behalf of the respective parties might be taken before any officer or magistrate, qualified to administer oaths, without special appointment by the court as an examiner. Under this stipulation notice was given by complainant's counsel that they would take proofs for final hearing in the city of Brooklyn. At the time fixed by the notice, one James Foley was called by the complainant, and examined orally by counsel for both parties, before Richard P. Marle, United States commissioner. A certain form of waste-valve marked by the commissioner was produced by complainant, and used in the examination and cross-examination of the witness. After that hearing, counsel for the parties stipulated that the testimony taken before Mr. Marle might be retained by complainant's counsel until the next hearing, to be fixed by counsel. Subsequently notice was given to defendant's counsel by complainant's counsel that the testimony of Mr. Foley would not be filed. A motion was then made by defendant's counsel for an order compelling the filing of the testimony and the exhibit used in the examination of the witness Foley. Upon the argument it was contended by defendant's counsel that the defendant was entitled to have the testimony and the accompanying exhibit filed, so that, if complainant did not see fit to use them on final hearing, the defendant might avail itself of the testimony, if it desired. On the other hand, complainant took the position that it might use the testimony or not, as it saw fit; and, if defendant desired the testimony, it could call and examine Mr. Foley as its witness. The sixty-seventh equity rule requires