SUPREME COURT DECISIONS.

[Filed at Sacramento, March 19, 1891.]

Appeal from Superior Court of Nevada County—J. M. Walling, Judge.

For appellant, J. I. Caldwell.

For respondents, Niles Searls and P. F. Simonds.

IN BANK.

NEVADA SCHOOL DISTRICT, Appellant, vs. B. N. SHOECRAFT ET AL., Respondents. } No. 14,092.

BY THE COURT.

[Justice Sharpstein dissenting.]

This action is brought in the name of the Nevada School District, and its purpose is to have the court decree that the defendants deliver all the lots, buildings and school-houses in the city of Nevada, used for the purpose of conducting the public schools, into the possession of George E. Shaw, J. I. Caldwell and N. Douglass, who claim to have been recently elected School Trustees of said district. The defendants, all but two, are the persons who are the regularly elected and acting School Directors of said district, under an Act of the Legislature approved March 25, 1874, entitled "an Act to establish and define the powers and duties of the Board of Education of Nevada School District;" and the other two are janitor and watchman under said other defendants. The point relied on by appellant is that said act of March 25, 1874, under which the Board of Education of Nevada City has been acting for more than sixteen years is unconstitutional and totally void. We do not think that the position taken by appellant is tenable.

There was nothing in the old Constitution which prevented special legislation (Meade vs. Watson, 67 Cal. 591); and, therefore the fact that when the said Act was passed Section 1593 of the Political Code provided that "the number of School Trustees for any school district, except where city boards are otherwise authorized by law, shall be three," did not prevent the Legislature from subsequently creating the Nevada district. The latest expression of the legislative will on the special subject in hand controls.

The provision of the present Constitution that the Legislature shall *not pass* local or special laws in certain cases, applies to future and not to past legislation. (Ex parte Burke, 59 Cal. 6.)

Neither do we think that the Act is void because inconsistent with any of the provisions of the present Constitution.

The judgment is affirmed.

[Filed at San Francisco March 19, 1891.]

Appeal from the Superior Court of San Francisco County, Department No. 7—T. H. Reardon, Judge.

For appellant, G. H. Perry.

For assignee and respondent, Pierson and Mitchell.

IN BANK.

IN THE MATTER OF H. WIERBITSZKY & Co., IN INSOLVENCY. } No. 14,155.

This is an apppeal by J. J. Rauer from an order declaring H. Wierbitszky & Co. insolvent debtors and appointing an assignee. A motion was made by respondent on November 28, 1890, to dismiss the appeal on the grounds, among others, that there is no certificate to the transcript, and nothing to show that the papers in what is called the transcript are copies of the originals filed in the Superior Court. On the same day appellant suggested a diminution of the record, and moved this court for an order directing the clerk of the lower court to attach to the transcript a proper certificate, which motion was on said day granted. Since then no such certificate has beeen furnished and no further step has been taken by appellant. There being no certificate to the transcript, the said motion of the respondent is now granted and the appeal is dismissed. MCFARLAND, J.

We concur:
DEHAVEN, J.,
SHARPSTEIN, J.,
PATERSON, J.,
HARRISON, J.

[Filed at Sacramento March 20, 1891.]

Appealed from the Superior Court of Tehama County—Charles P. Braynard, Judge.

For appellant, John F. Ellison and J. T. Matlock.

For respondent, A. M. McCoy, Clay W. Taylor and Jackson Hatch.

IN BANK.

MASON, Respondent, vs. VESTAL, Appellant. } No. 14,001.

This appeal is from the judgment and from an order denying defendant's motion for a new trial. The suit was brought against the Sheriff to recover for property seized at the suit of L. Newcomer against James Gleason, who is a brother of the plaintiff. The answer denies the title and possession of plaintiff, justifies under the writ, and avers title in Gleason.

Plaintiff derives her title from Gleason, and at the trial the controversy was as to the validity of the transfer to her. The questions raised relate almost entirely to alleged erroneous rulings in the admission of evidence tending to establish the *bona fides* of the sale to plaintiff.

On the trial the plaintiff objected to the testimony of defendant on this subject, claiming that the answer did not raise the issue of fraud, and now insists that if the rulings complained of are erroneous they are still not injurious for the same reason.

It is claimed that the insufficiency of this answer is established by the cases of Albertoli vs. Branham (80 Cal. 633) and Sukeford vs. Lord (25 Pac. Rep. 497).

In those cases, however, the defendants did not content themselves with merely denying the right of plaintiff, justifying under a writ, and averring title in the debtor of the attaching creditor, but proceeded to charge the plaintiff with an attempt to assist the debtor in defrauding his creditors. It is not necessary to set up such a defense. It has been held that the defendant is not required to anticipate the source from which plaintiff claims to derive his title, but if he does proceed to set up the acts of fraud which he charges render plaintiff's title invalid, he must state facts which are sufficient in law to that end.

But such plea is entirely unnecessary. A sale made to hinder, delay and defraud creditors is as to such creditors absolutely void and not voidable merely. (Sec. 3439 C. C.; Freeman on Executions, 136 Butler vs. Collins, 12 Cal. 463.)

When the defendant denies the plaintiff's title, and shows himself to be a creditor, such evidence is admissible in rebuttal of plaintiff's proof of title. It shows such title invalid—that as to defendant the transfer is void.

This question was expressly decided by this court in Grum vs. Barney (55 Cal. 254) and in Humphreys vs. Harkey (55 Cal. 284), and decisions elsewhere accord with these decisions. See Tupper vs. Thompson, 26 Minn. 385.

James Gleason was a witness for the plaintiff, and gave evidence in support of nearly all the facts constituting plaintiff's case. In rebuttal he was impeached by evidence of statements made by him inconsistent with his testimony, and by showing that his reputation for truth was bad. The plaintiff was then allowed, against the objection of defendant, to prove by other witnesses that he had also made statements consistent with his testimony. When this testimony was objected to, counsel explained the offer: "We propose to prove (statements made?) at a time so far remote that there was no possibility he would foresee it, and which precludes the idea that the story was a fabrication of recent date."

Respondent does not claim the right to prove such statements in rebuttal of the statements proved by defendant, but he claims that the fact that his witness was impeached by evidence of bad reputation, justifies such evidence.

The first thing that strikes one upon such a proposition is that this character of evidence does not meet the emergencies of the case. Where a witness is discredited by showing that he is not disinterested, but is testifying under an inducement to misstate the facts, there is some plausibility in the claim that statements to the same effect as his testimony made before he became interested, tend in some degree to show that his testimony was not affected by this interest. Here the question was whether Gleason was a truthful man, and the evidence had no bearing upon that issue.

The doctrine upon this subject is discussed in People vs. Doyell (48 Cal. 90); Barkly vs. Copeland (74 Cal. 1), and 1 Greenleaf, Sec. 469.

These authorities do not support the respondent in this matter, and he has not referred us to any which do. On the hypothesis of the plaintiff, Gleason had no interest in the case, nor could he have had any except upon the theory of the defense, that the transaction was an attempt to hide his property from his creditors, and upon that supposition, who can tell how long he had been seeking a cover for his fraud.

It is not denied that the evidence was material, and it must have been injurious. The trial was before a jury who found for plaintiff. We think the ruling erroneous.

The other alleged errors need not be noticed as they may not be repeated on a new trial, except the point made that the evidence does not show on immediate delivery. Upon that point we think there was evidence enough to warrant the court in submitting the matter to the jury.

We advise that the judgment and order be reversed and a new trial ordered.

We concur: TEMPLE, C.
VAN CLIEF, C.,
FOOTE, C.

THE COURT.

For the reasons given in the foregoing opinion the judgment and order are reversed and a new trial ordered.

[Filed at Los Angeles, March 21, 1891.]

Appeal from the Superior Court of Fresno County—M. K. Harris, Judge.

For appellant and Intervenor, W. D. Tupper, District Attorney, and H. H. Welsh.

For respondent, Goucher and Jones.

For defendant, C. C. Merriam.

DEPARTMENT TWO.

PRINCE, Respondent, vs. CITY OF FRESNO, Defendant, COUNTY OF FRESNO, Intervenor, and Appellant. } No. 13,791.

This action was tried upon an agreed state of facts, under sections 1138 and 1140 of the Code of Civil Procedure. The plaintiff is the duly elected and qualified Recorder of the City of Fresno, which is a city of the fifth class under the laws of the State.

During the months of April, May, June, July, August and September, 1889, he "collected fines in his court from parties convicted therein of violations of various provisions of the Penal Code of the State of California, as distinguished from violations of the ordinances of the City of Fresno, to the amount of $646 90." He presented to the city his bill for fees claimed to be due him earned during that time, in substance as follows:

For fees in cases where fines were collected for violations of the Penal Code of the State, $175 00. For fees in cases where fines were not collected for violations of the Penal Code, $319 25. Total fees claimed $494 25. The city refused to allow the bill in whole or in part.

The county came in as an intervenor, claiming to be interested in the suit, and it is set out in the agreed facts that: "If it be determined that the city is not liable to the Recorder for said fees then the county is liable, it being unquestioned that either the city or county is so liable. And if the determination of this suit is adverse to the Recorder, the plaintiff, then the fines collected as aforesaid, to wit.: the said sum of $646 90, should be paid in to the County Treasurer. Wherefore it is prayed that the questions raised by the facts above stated be determined by this court and judgment entered accordingly."

Judgment was rendered "that plaintiff pay to the County Treasurer of the said county of Fresno, intervenor herein, all fines heretofore imposed by him for violations of the provisions of the Penal Code, and paid after commitment, and the residue of all such fines paid before commitment, after deducting therefrom the expenses of the prosecution in cases in which said fines were imposed, and that the intervenor, by its proper officers, agents and representatives audit and pay to plaintiff for his services, heretofore rendered in cases of violations of the provisions of the Penal Code, the same fees and compensation as are allowed by law to Justices of the Peace in like cases."

The Recorder's Court of the City of Fresno, its jurisdiction, rules, practice and procedure are established by Section 806 of the Act entitled "Municipal Corporation Bill," page 830, Deering's Political Code.

" * * * * Said Recorder's Court shall have jurisdiction, concurrently with the Justices' Courts, of all actions and proceedings, civil and criminal, arising within the corporate limits of such city, and which might be tried in such Justice's Court; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty or forfeiture prescribed for the breach of any ordinance of such city, of all actions founded upon any obligations or liability created by any ordinance, and of all prosecutions for any violation of any ordinance. * ."

Section 607 (same page) reads:

"The Recorder shall be Judge of the Recorder's Court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments. He shall be entitled to charge and receive for his services such fees as are or may be allowed by law to Justices of the Peace for like services, except that, for his services in criminal prosecutions for violation of ordinances, he shall be entitled to receive only such monthly salary as the Board of Trustees shall, by ordinance prescribe; which compensation, when once fixed, shall not be altered within two years."

The jurisdiction conferred by Section 806, *supra*, on the Recorder's Court here involved is: First—Concurrent with Justices' Courts as conferred by general laws according to Section 4316 of the Political Code, and Section 832 et seq. of the Code of Civil Procedure as to all matters ordinarily cognizable in the Justice's Court, within the corporate limits of the City of Fresno. Second—Exclusive jurisdiction within the same territory as to certain matters growing out of the ordinances of that city.

He may in addition to presiding as Judge of the Recorder's Court perform all the duties and have the powers of an ordinary magistrate. He may, like a Justice of the Peace, take acknowledgments and affidavits. (Sec. 179, C. C. P.) He is, for his services when acting in like manner as a Justice of the Peace, allowed "to charge and receive for his services" the same fees as such Justices "are or may be allowed by law * * for like services." The only exception to this being that he is not entitled to receive fees, in that way, for anything done for his services in criminal proceedings under the city ordinances, but is for those services given a salary by the City Trustees. It is not said expressly whom he shall charge, or from what source he shall receive the fees for his action when exercising the jurisdiction and performing the functions of a Justice of the Peace.

The main question for determination is, we think, whether as to all criminal matters, under the Penal Code of the State, the action of the Recorder is that of a Justice of the Peace or not.

The appellant seems to contend that the Recorder is a mere officer of the city of Fresno, under the law authorizing charters for cities of the fifth class, and that under Section 1461 of the Penal Code, which gives the definition of a Police Judge, that this Recorder is such Judge, and as such, is not required, under Section 1570 of that code, to pay over fines to the County Treasurer, but must, under Section 1457, pay them to the City Treasurer, and must get his fees from the city.

But we do not agree to this view of the matter. As to a very similar statute conferring jurisdiction upon a Recorder, it was said in Curtis vs. County of Sacramento (13 Cal. 292-3-4):

"The appellant was Recorder of Sacramento City, and, as such, claims that the county is indebted to him for fees due him for convictions made by him of divers criminals, prosecuted under the laws of the State. The only question presented by the record is, whether he is to be considered as a Justice of the Peace in respect to this claim, and is entitled, as if he were, to the fees.

"It seems that the charter of the city of Sacramento (C. L. 966, Section 35) provided that the Recorder 'should exercise all the powers of a Justice of the Peace in regard to offenses committed within the city limits, subject to all the rules governing Justices of the Peace, and have power to administer all oaths known to the law.'

"The point is made that the Recorder is a judicial officer, and the Constitution inhibits him from taking fees. But we think the Constitution did not contemplate this class of officers as subjects of this inhibition. As a mere subordinate officer of the corporation, to carry into effect its by-laws or ordinances, he is less in dignity than a Justice of the Peace, and cannot be comprehended by a provision which expressly excludes Justices; *and we think that the mere addition of the duties of Justices in respect to criminal matters has no effect in depriving the office of the same qualities in this respect as that of Justices. Besides, as to all this matter, he is really and in fact a Justice of the Peace; and the Constitution, when it exempted Justices from the operation of this restraint, meant to exempt all those, by whatever name called, who are intrusted with the duties assigned by the law to those officers.*" (The italics are our own.)

The decision, while covering other matters besides the one in hand, seems to go to the point involved here, that a Recorder of a city may have *a dual jurisdiction* and functions, and may be a Justice of the Peace as to certain matters, and a Recorder as to others. So here, we think, that the law under consideration confers this jurisdiction, and we know of no provision in the Constitution which inhibits the Legislature from creating such an official. (Cons. Cal. Article XI., Sections 1-11-13.)

It appears, therefore, that as to such matters as are given him in charge as a Justice of the Peace, the Recorder is such an officer, and not a Police Judge.

If the Recorder imposed fines as a Justice of the Peace, and not as Police Judge such fines by law are subject to be paid over to the county treasury under Section 1570 of the Penal Code, after payments of costs, etc.

If, then, as we conclude, the Recorder, as to all prosecutions under the Penal Code, of which he has cognizance under the charter, is a Justice of the Peace, although Section 807 of the municipal corporation bill does not in express terms declare that he shall charge the county for his fees when acting under that code, it nevertheless gives him authority to charge and receive for his services such fees "as are or may be allowed by law to Justices of the Peace for like services."

Section 225 of the County Government Act provides:

"The following are county charges:

"Sub. 6. All charges and accounts for services rendered by any Justice of the Peace for services in the examination of the persons charged with crime not otherwise provided for by law."

Possessing, then, as the Recorder does, the right to act and charge as a Justice of the Peace, and he being to all intents and purposes a Justice of the Peace, when acting under the Penal Code of the State, as distinct from the city ordinances, he must be paid for such services as he may perform as such, by the county, like any Justice of the Peace in a township of a county. And the fines are subject to the same disposition as if he had imposed them as such Justice of the Peace.

For these reasons we advise that the judgment be affirmed. FOOTE, C.

We concur:
VAN CLIEF, C.,
BELCHER, C.

THE COURT.

For the reasons given in the foregoing opinion the judgment is affirmed.

[Filed in San Francisco, March 21, 1891.]

Appeal from Superior Court of the City and County of San Francisco, Department No. 4—J. P. Hoge, Judge.

For appellant, T. M. Osment.

For respondent, Newlands, Allen & Herrin.

IN BANK.

WM. S. CHAPMAN, Appellant, vs. THE BANK OF CALIFORNIA, Respondent. } No. 14,158.

Motion to dismiss an appeal from a judgment and order denying a new trial, on the ground that the transcript was not filed in time.

The judgment in favor of defendant was rendered September 27, 1889. The order overruling plaintiff's motion for a new trial, was made August 28, 1890. Notice of appeal from the judgment and order was filed and served September 25th and undertaking on appeal filed September 27th.

The time for filing the printed transcript prescribed by Rule II. of this court expired November 5, 1890.

On November 15th, no transcript having been filed, respondent served notice of his motion to dismiss. On the same day, but subsequent to the service of said notice, appellant filed a written transcript duly certified by the County Clerk, which was thereafter printed and served.

The fact that the transcript was filed the same day notice to dismiss was served but at a later hour does not bring the appellant within the protection of Rule II. of this court (Hoyt vs. S. F. & N. P. R. R. No. 14,066) and the motion to dismiss must prevail unless the appellant has by his affidavit shown a sufficient excuse for his delay to call for some relaxation of the rule providing for the dismissal of appeals for failure to file the transcript within the time prescribed.

As to this, the undisputed facts are that on September 25th, the very day the notice of appeal was served, the attorney for appellant was called to the State of Tennessee on account of the illness of his mother, and did not return to California until October 24th. On his return, owing to the demands upon his attention of a multiplicity of business that had accumulated during his absence, by mere inadvertance he overlooked this case for a few days. But within nine days after the time for filing the transcript had expired, viz.: on the 14th of November, he prepared and presented to the County Clerk a correct type-written copy of the record to be certified. The clerk was not able to compare and certify this transcript until the following day, and in the meantime the notice to dismiss was served.

This shows that the appeal was taken and prosecuted in good faith. The delay in filing the transcript was trifling, and the hearing and decision of the cause on its merits will not thereby be delayed—at least, not appreciably. The circumstances which occasioned the delay and oversight of counsel were such as to appeal strongly to the discretionary power of the court, and would, without doubt, have procured an order extending the time for filing the transcript if they had been brought to our attention before the motion to dismiss was made. If so, there is no reason why we may not, after the motion, relieve the appellant from the consequences of his delay, when the facts show that before service of the notice of motion to dismiss he was proceeding with all expedition to rectify his mistake.

Motion denied. BEATTY, C. J.

We concur:
MCFARLAND, J.,
DEHAVEN, J.,
PATERSON, J.,
SHARPSTEIN, J.,
HARRISON, J.

[Filed in San Francisco, March 21, 1891.]

Review, to stay proceedings of the Superior Court of the City and County of San Francisco, Department No. 5.—John Hunt, Judge.

For petitioner, Crittenden Thornton, F. H. Mergbach and John F. Hanlon.

For respondent, Horace W. Philbrook.

IN BANK.

JAMES R. GARNISS, Petitioner, vs. SUPERIOR COURT OF SAN FRANCISCO, John Hunt, J. } No. 14,160.

Application for writ of review.

The facts set out in petitioner's application are as follows: "That one Horace W. Philbrook, upon the 15th day of April, 1890, commenced an action against the petitioner in the Justices' Court of the City and County of San Francisco upon a complaint, stating among other things: 'That on the 24th day of May, 1889, in the Superior Court of the City and County of San Francisco a civil action was commenced by Edward Harrison, administrator, et al., against Mary J. Lynch et al., for the purpose of recovering from said Mary J. Lynch a certain lot of land and of barring the other defendants of all rights, title and interest therein. That on the 4th day of February, 1889, a judgment was rendered in said action against the said defendants. That on the 27th day of March, 1889, and prior to the commencement of the action of Philbrook vs. Garniss, the Superior Court appointed James R. Garniss (defendant herein) receiver, to receive, hold and preserve, during the pendency of an appeal from said judgment, the rents of said lot of land. That prior to January 1, 1890, said receiver, as such, received the sum of $480 as rents of the property. That on the 8th day of November, 1889, said Superior Court granted a new trial in said cause, and upon the 11th day of December, 1889, rendered judgment in said action in favor of Mary J. Lynch, declaring her to be the owner of said lot of land and the money in the hands of the receiver. That on the 28th day of February, 1890, said Mary J. Lynch assigned to this plaintiff (Philbrook) all moneys belonging to her in the hands of said receiver. That on the 7th day of March, 1890, the court settled the receiver's accounts, and allowed him as credits as such officer all of said $480, except the sum of $274 50, and directed him to pay said sum to Mary J. Lynch. That on the 10th day of March, 1890, plaintiff notified the receiver of the assignment and demanded the payment to him of the $274 50, but he has refused to pay the same. Plaintiff prays for judgment,' etc.

"Defendant answered this complaint with a general denial and at the opening of the trial objected to the Justice's Court trying the action, upon the ground that it was an action in equity and therefore the court had no jurisdiction. The objections were overruled and upon trial the plaintiff obtained judgment as prayed for.

"The defendant appealed the case to the superior court, filed an amended answer, and at the commencement of the trial objected to the jurisdiction of the Superior Court to try the case, upon the ground that its jurisdiction in equity was original and it had no appellate jurisdiction in such a case. The objections were overruled and the trial resulted in another judgment for the plaintiff as prayed for in the complaint. That on the trial of said case both the Justice's Court and the Superior Court exceeded their jurisdiction, for the reasons above stated, and petitioner has no remedy, except by this application."

It appears that the petitioner occupies the somewhat novel position of having appealed his case to the Superior Court upon questions of law and fact, then objecting to said court trying the case upon the ground of want of jurisdiction, and upon that objection being overruled, taking the chance of an adverse verdict and having lost that chance, then proceeding, by review, to this court to test the jurisdiction of the Superior Court.

It seems the much better practice for petitioner would have been to directly attack the jurisdiction of the Justice's Court in some appropriate manner rather than appeal the case to the Superior Court upon its merits. Indeed, if petitioner's contention is true, that the Superior Court had no jurisdiction to try the case upon appeal, because the Justice's Court had no jurisdiction to try the case at all, then it is difficult to see how the petitioner could secure a standing in the Superior Court upon appeal, for any purpose, for, after a case has been tried in the Justice's Court upon its merits and an appeal is taken to the appellate court upon the law and the facts, or upon the law (when a new trial is granted) the cause is heard *de novo* in the Superior Court.

Owing to the views we entertain upon the other branch of the case, it is not necessary to consider the question as to whether the conduct of the petitioner in appealing this cause to the Superior Court upon the law and the facts creates such an estoppel against him as that he can not be heard to object to the jurisdiction of that court to try the cause.

Petitioner contends that the complaint in the case of Philbrook vs. Garniss, shows an equitable cause of action of which the Justice's Court had no jurisdiction.

Respondent insists that the complaint shows a claim for money had and received by defendant to plaintiff's use. A receiver may be appointed in an action of ejectment, after judgment during the pendency of the appeal, and reading the application of the petitioner by the very dim light thrown upon the question by the meager facts stated as to the character of the action of Harrison vs. Lynch it appears to be a proceeding in ejectment. We then find the petitioner appointed receiver, after judgment for the plaintiff, and pending proceedings for appeal, for the express purpose of collecting and preserving the rents of the land. Thereafter the motion for a new trial being granted by the lower court, and upon the succeeding trial judgment going for the defendant, the powers and duties of the receiver were clearly at an end.

"Though a receiver may be and generally is appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of such party, or of any other party; it is the holding of the court for the equal benefit of all persons who may be finally adjudged by the court to have rights in it; where, however, the rights of the parties are established, he is considered as holding for the benefit of the parties entitled to the property." (Beach on Receivers, Sec. 249.) The contention of petitioner that that these moneys in his hands were a part of the judgment in the case of Harrison vs. Lynch *et als.*, cannot be sustained. Indeed, the necessity of a specific decree by the court, declaring them the property of defendant, Lynch, was not required, as she was necessarily entitled to them by reason of the judgment in her favor as to the possession of the realty. If plaintiff had finally recovered in the action he could have had no judgment against defendant Lynch for these moneys, for she never had possession of them; they were in the custody of the court; the amount was certain, and had been preserved by the receiver *in specie*, for the only purpose that it might be delivered upon the order of the court to the party who should finally recover in the action.

The order of the court decreeing that this money was the property of Mary J. Lynch was not a judgment for the rents and profits of the realty; it was no money judgment whatever; it was no judgment upon which an execution could have issued against anybody. It was not a judgment against the plaintiff, and it was not a judgment against the receiver, for he was not a party to the suit.

This decree, then, establishing the status of the funds in the hands of the receiver, was not a part of the judgment within the pleadings, or the proof in the case of Harrison vs. Lynch. Neither was the assignment by Mary J. Lynch to Philbrook of the moneys in the hands of the receiver an assignment of a part of a demand. She assigned her entire demand, amounting to $480. The mere fact that this money was held by the receiver, subject to a lien upon it, for his fees and costs of receivership, and was thus charged with such costs, which he was entitled to deduct from the amount upon the settlement of his account, in no way effects the question of Mary J. Lynch's assignment of the entire demand. Her act in the matter was as entire, full and complete as it were possible to make it, and it effected the exact result contended for by petitioner, for it obliterated the entire demand. What the assignee failed to obtain of the demand, Garniss, the debtor, secured for himself. Why should he be allowed to complain that this assignment was for a part of a demand, when at this very moment the balance of the demand is in his pocket and his own property by a decree of the court?

The rule that a court of law will not recognize an assignment of part only of an entire demand or judgment, is based upon the reason that the liability of the debtor extends in favor of one person and the law will not impose upon him the burden of being subjected to several suits or executions by different persons for fractional parts of the demand or judgment.

In the case at bar, for the reasons already stated, this principle has no application.

It seems clear that the petitioner held this money as money had and received for the benefit of Mary J. Lynch, and that the action of Philbrook vs. Garniss was in assumpsit: an action at law and not in equity and was within the jurisdiction of the Justice's Court, and the appellate jurisdiction of the Superior Court.

Let the application be denied. So ordered. GAROUTTE, J.

We concur:
HARRISON, J.,
PATERSON, J.,
DE HAVEN, J.,
MCFARLAND, J.,
SHARPSTEIN, J.

Real Estate, Etc.

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The primary object of the purchase of this body of land was the breaking up of a large holding for the purpose of promoting its settlement in smaller quantities and its devotion to diligent husbandry.

For further particulars call upon, or address,
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WELCH'S CALIFORNIA INHALER

Sure Cure for Catarrh, Bronchitis, Asthma, Colds, etc.

"The Only all Night Inhalation."

Break up a cold in one night. Sure preventive for all infectious diseases. For sale by all druggists, or sent postpaid for $2 50 by the

WELCH INHALER AND MEDICINE CO.,
37 Second street, San Francisco.
m28-3m

SPRING STYLES —IN— Millinery Goods,

An Immense Stock! Latest Novelties!

And Most Reasonable Prices. All are invited.

MISS E. SWEENEY (SUCCESSOR TO Miss K. Golden), 527 J street.

NOTE—Mrs. E. Van Alstine will be pleased to see her friends at this establishment, where she is now located. mr5-tf

R. A. OLMSTEAD. S. P. OLMSTEAD.

R. A. OLMSTEAD & CO.

Wish to announce that they have reopened the store formerly occupied by J. C. SCHADEN, corner Fourth and L streets, with a complete stock of

Groceries, Provisions, Etc.

The place has been renovated, and the stock is first-class in every particular, and will be sold at cash prices which will defy competition. mr4-tf

Waterhouse & Lester,

—DEALERS IN—

Iron, Steel, Cumberland Coal, Wagon Lumber and Carriage Hardware.

709, 711, 713, 715 J St., Sacramento.

FRIEND & TERRY Lumber Company.

MAIN YARD AND OFFICE 1310 SECOND street. Branch Yard, Corner Twelfth and J streets.

LAWN :-: MOWERS :-: REPAIRED.

Fourteen years experience.

Saw Filing and General Repairing.

C. CLINCH, 824 K Street,
Opposite Hale Bros. Store. mr26-tf

PALM DAIRY AND TABLE SALT.

BEST IN THE WORLD. SAMPLES FREE. Address E. P. FIGG, New Liverpool Salt Depot, 1119 Fourth street, Sacramento City, Cal. mr28-1m

HOUSE PAINTING AND PAPER HANGING in all its branches at reasonable rates. A. H. ANDERSON, 2509 I street. Orders left with M. Hirsh, at 1013 J street, will receive prompt attention. mr15-1m

Miscellaneous.

THE GRAND OPENING

Now in progress. Most successful of the season.

MILLINERY---IMPORTED STOCK.

Latest Designs and Novelties in Spring Goods.

The New York Milliner,

S. T. MI HOOVER, 625 J Street.

JOS. THIEBEN CROCKERY CO.

—WE HAVE 1,000 DOZEN—

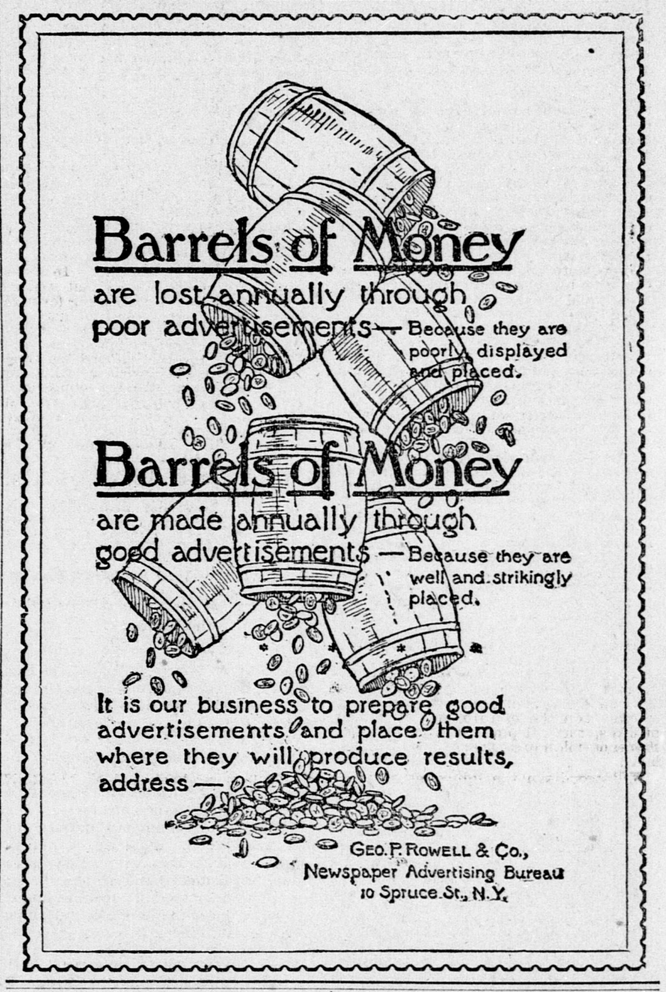
JAPANESE MUSH BOWLS, Which we will sell until further notice, 6 for 25c,

And as this is the last lot that can be sold for anywhere near this price we would advise all to buy at once or send for them.

Our Spring Novelties are Just Arriving. We invite the public at large to call and examine our well-selected stock.

Jos. Thieben Crockery Company,

THE LIVE CROCKERY HOUSE OF SACRAMENTO,
NO. 518 J STREET.



Fruits, Seeds, Produce, Etc.

W. R. STRONG COMPANY,
—HEADQUARTERS FOR—
Alfalfa Seed, Etc.
Oregon Potatoes in Lots to Suit.

S. GERSON & CO.,
—WHOLESALE—
Fruit, Produce and Commission Merchants,
SACRAMENTO, CAL.
P. O. Box 170.

W. H. WOOD & CO.,
Wholesale Dealers and Shippers of
California Fruits, Potatoes, Beans, BUTTER, ETC.,
Nos. 117 to 125 J Street, Sacramento.

CURTIS BROS. & CO.,
General Commission Merchants,
Wholesale Dealers in Fruit and Produce,
308, 310, 312 K St., Sacramento.
Telephone 37. Postoffice Box 335.

EUGENE J. GREGORY. FRANK GREGORY.
GREGORY BROS. CO.,
SUCCESSORS TO GREGORY, BARNES & Co., Nos. 126 and 128 J st., Sacramento, wholesale dealers in Produce and Fruit. Full stocks of Potatoes, Vegetables, Green and Dried Fruits, Beans, Alfalfa, Butter, Eggs, Cheese, Poultry, etc., always on hand. Orders filled at LOWEST RATES.

Undertakers.

JOHN MILLER
(Successor to Fritz & MILLER),
UNDERTAKING PARLORS,
905 K STREET (ODD FELLOWS' TEMple). A complete stock of Undertaking Goods always on hand. EMBALMING A SPECIALTY. Telephone No. 186.

J. FRANK CLARK,
UNDERTAKING PARLORS,
1017-1019 Fourth St., Sacramento.
EMBALMING A SPECIALTY. GEORGE H. CLARK, Funeral Director and County Coroner. Telephone No. 134.

W. J. KAVANAUGH, Undertaker,
No. 513 J St., bet. Fifth and Sixth.
ALWAYS ON HAND A LARGE ASSORTment of Metallic and Wooden Caskets. Burial Cases, Coffins and Shrouds furnished. Coffin orders will receive prompt attention on short notice and at the lowest rates. Office open day and night. Telephone No. 305.

H. S. CROCKER & CO.

208 and 210 J Street,

The Leading Stationers, Printers and Lithographers.

Agents for Caligraph Type Writer and Supplies.

MANUFACTURERS OF BLANK BOOKS.

S. CARLE,
SUCCESSOR TO CARLE & CROLY, CONtractor and Builder. Orders solicited and promptness guaranteed. Office and shop, 1124 Second street, between K and L.

Railroad Time Table.

SOUTHERN PACIFIC COMPANY

[PACIFIC SYSTEM.]

JANUARY 19, 1891.

Trains Leave and are Due to Arrive at Sacramento:

LEAVE	TRAINS RUN DAILY.	ARRIVE
6:15 A	Calistoga and Napa	11:40 A
3:05 P	Calistoga and Napa	8:40 P
12:50 A	Ashland and Portland	5:55 A
4:30 P	Deming, El Paso and East	7:00 P
7:30 P	Knights Landing	7:10 A
10:50 A	Los Angeles, Ogden and East—Second Class	9:35 A
12:05 P	Central Atlantic Express for Ogden and East	2:25 A
11:00 P	Oroville	8:15 A
3:00 P	Oroville	10:30 A
3:00 P	Red Bluff via Marysville	10:30 A
10:40 A	Redding via Willows	4:00 P
2:25 A	San Francisco via Benicia	11:40 A
6:15 A	San Francisco via Benicia	12:35 A
8:40 A	San Francisco via Benicia	10:40 P
3:05 P	San Francisco via Benicia	8:40 P
*10:00 A	San Francisco via steamer	‡6:00 A
10:50 A	San Fran. via Livermore	2:50 P
10:50 A	San Jose	2:50 P
4:30 P	Santa Barbara	9:35 A
6:15 A	Santa Rosa	11:40 A
3:05 P	Santa Rosa	8:40 P
8:50 A	Stockton and Galt	7:00 P
4:30 P	Stockton and Galt	9:35 A
12:05 P	Truckee and Reno	2:25 A
11:00 P	Truckee and Reno	8:15 A
12:05 P	Colfax	8:15 A
6:15 A	Vallejo	11:40 A
3:05 P	Vallejo	†8:40 P
*6:35 A	Folsom and Placerville	*2:40 P
*3:10 P	Folsom and Placerville	*11:35 A

*Sunday excepted. †Sunday only. ‡Monday excepted. A.—For morning. P.—For afternoon.

RICHARD GRAY, Gen. Traffic Manager.
T. H. GOODMAN, General Passenger Agent

Liquors, Wine, Beer, Etc.

CAPT. STEVENS,
AT 807 J STREET, BETWEEN EIGHTH and Ninth, the place for Fine Wines, Liquors and Cigars. mr14-tf

THE VIDETTE,
No. 228, J St., Sacramento, Cal.,
FINEST WINES, LIQUORS AND Cigars.
mr12-tf CHAS. A. VIEMEISTER, Prop.

CONCORDIA BEER HALL,
No. 1021 Fourth Street.
HAVING MADE EXTENSIVE IMPROVEments the public are now cordially invited to a first-class resort. Sandwiches of all kinds. Buffalo Beer on draught and in bottles. The finest Wines, Liquors and Cigars on hand. H. K