

paid in. In all cases of losses exceeding the means of the corporation, each stockholder shall be held liable to the amount of unpaid stock held by him."

The defendant, Gray, subscribed \$10,000 to the capital stock of the company. He has paid only \$2,000 on his subscription, and still owes the company for the rest. Under the foregoing section of the charter some appropriate action for the benefit of creditors may undoubtedly be maintained against him for the recovery of this unpaid balance, if the losses of the company are in excess of its means.

This suit was at law by a policy-holder of the company, against the defendant as a stockholder, to recover an amount claimed to be due on the policy. There is no averment in the declaration to the effect that the losses of the company, or its liabilities, exceed its assets. The case stands on demurrer to the declaration. Without, therefore, determining whether, under the decisions of the courts of Illinois, if it appeared that there was a deficiency of assets, an action like this might be maintained, we affirm the judgment below, because we are all of opinion that, until such contingency arises, a creditor cannot sue a stockholder to enforce this liability.

Judgment affirmed.



POPPE *v.* LANGFORD.

This court has no jurisdiction to re-examine the judgment of a State court affirming that the title of the true owner of lands is extinguished by an adverse possession under color of right for the length of time that would bar an action of ejectment.

MOTION to dismiss a writ of error to the Supreme Court of the State of California.

Langford, the substituted plaintiff in an action of ejectment, against Poppe, in the District Court of the Fifth Judicial District of California, for the County of San Joaquin, recovered judgment for a tract of land in that county. The only 'real question involved in the case, and passed upon by the Supreme

Court of the State to which an appeal was taken, is stated in the opinion of this court.

Mr. C. T. Botts and *Mr. James D. Coleman* in support of the motion.

Mr. C. R. Greathouse and *Mr. A. Chester, contra.*

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

It is clear we have no jurisdiction in this case. All the court below decided was, that in California the title of the true owner of lands is extinguished by an adverse possession under color of right for the length of time which would be a bar to a recovery in ejectment. This is not a Federal question. All that was said about sect. 1007 of the Civil Code of California was unnecessary and not required in the determination of the cause.

Motion granted.

LOUDON v. TAXING DISTRICT.

1. Lawful interest is the only damages to which a party is entitled for the non-payment of money due upon contract. His right is limited to the recovery of the money so due and such interest.
2. A city entered into a contract with A., whereby it executed its bonds in discharge of certain indebtedness to him and agreed to appropriate a specific portion of the revenue derived from taxation to pay judgments in his favor against it. The city did not apply the taxes pursuant to its contract, and he was compelled to pay exorbitant interest to raise money to meet his engagements. Held, that the failure of the city to make the stipulated application of the taxes furnishes no ground for setting aside the contract, and that A. is entitled to no other relief than a provision for paying the balance due upon the judgments out of the taxes levied or to be levied in that behalf.
3. A party whose appeal has been dismissed cannot be heard in opposition to the decree.

APPEAL from the Circuit Court of the United States for the Western District of Tennessee.

The firm of J. & M. Loudon, of which James A. Loudon, the appellant, is the surviving partner, entered in the year