the demurrer to the fourth defence in the answer, and the defendant excepted to the ruling, the question as to whether the petition was sufficient as a pleading was thereby brought up, because the District Court ought to have given judgment against the party which committed the first fault in pleading. But we are of opinion that the record must show that the question as to whether it appeared by the petition that the action was barred by the statute was distinctly presented to and raised before the District Court. This does not appear, as before stated.

The defendant also contends that various objections and exceptions taken by him to the admission of evidence, and to instructions to the jury, and various grounds of error stated in the motion for a new trial, raised the question referred to. It is sufficient to say that the objections to the admission of evidence merely state that the evidence is incompetent, immaterial, and irrelevant, without suggesting the question of the statute of limitation; and that the exceptions to the instructions to the jury and the grounds of error set forth in the motion for a new trial make no allusion to that question, nor is there any allusion to it in the record sent from the District Court. Under such circumstances the question cannot be raised in the appellate court. *Mays* v. *Fritton*, 20 Wall. 414, and cases there cited; *Beaver* v. *Taylor*, 93 U. S. 46; *Wheeler* v. *Sedgwick*, 94 id. 1.

Because the Supreme Court of Wyoming held that the District Court had no jurisdiction of this suit, it did not examine any of the questions raised by the defendant in the bill of exceptions taken by him. As it improperly reversed the judgment of the District Court, its judgment must be reversed; and as it passed on no other question but the jurisdiction of the District Court, the case must, under the provisions of sects. 701 and 702 of the Revised Statutes, be remanded to it, with directions to hear and determine the questions raised by the petition in error, and to take such further proceedings as may be in conformity with law and not inconsistent with the opinion of this court; and it is

So ordered.

NOTE. — *Upton* v. *Kent*, error to the Supreme Court of the Territory of Wyoming, was submitted at the same time as the preceding case, and was argued by

the same counsel for the plaintiff in error, and by *Mr. Samuel Shellabarger* and *Mr. Jeremiah M. Wilson* for the defendant in error.

MR. JUSTICE BLATCHFORD, in delivering the opinion of the court, remarked that the facts and the questions raised were essentially the same in both cases. The same judgment was entered in this case as in *Upton* v. *McLaughlin.*

EX PARTE BOYD.

1. A party in whose favor judgment is rendered in a common-law cause, by a court of the United States sitting in the State of New York, is, in order to reach the property of the judgment debtor, entitled to the remedy provided by the statute of that State, and known as proceedings supplementary to execution.
2. Section 916 of the Revised Statutes which authorizes, as a matter of procedure, the resort to that remedy is not in conflict with the Constitution.

PETITION for a writ of *habeas corpus.*

The facts and the statutes bearing upon the question involved are set out in the opinion of the court.

Mr. Roger M. Sherman for the petitioner.

The Solicitor-General for the United States.

MR. JUSTICE MATTHEWS delivered the opinion of the court.

It is made to appear, by this application, that a judgment was recovered in the Circuit Court for the Southern District of New York, in favor of the United States against Robert Boyd, the petitioner, and Francis O'Rourke, on which execution was issued and returned unsatisfied, except in the sum of $200, leaving due thereon $8,128.92. It was thereupon ordered by the court, on motion of the plaintiff's attorney, that the matter be referred to Joseph M. Deuel, Esq., a commissioner of the court, "to examine the said Robert Boyd and Francis O'Rourke, and take answers on oath concerning their property, and to reduce such answers and examination to writing, and also to examine on oath, concerning such property, such witnesses as may be offered by the respective parties, and reduce such examination to writing, and report such answers and examination, and all his proceedings under and by virtue of this order, to this