conveyance in trust of the property owned by the wife to secure the debt which was described, and inasmuch as the wife insists that the property was her general property, the cross-bill ought not to be dismissed because of a single alternative averment that it was her separate property. *The decree is affirmed.*

Mr. Michael L. Woods and *Mrs. Belva A. Lockwood* for appellants. *Mr. Enoch Totten* for appellee.

RELFE *v.* WILSON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 92. October Term, 1880. — Decided December 20, 1880.

In Missouri, in an action against an insurer to recover on a policy, evidence of an offer by the insurer to settle for less than the policy, and of an intimation by the same to the insured that the policy was obtained by misrepresentation, is admissible to show "vexatious delay."

When competent evidence becomes immaterial under a charge favorable to the party offering it, its exclusion is not error.

It is no error to refuse to give special instructions asked for when the general charge has stated them in language equally favorable to the party asking.

If a series of proportions are embodied in instructions, and the instructions are excepted to in a mass, the exception will be overruled if any one proposition is correct.

The act of Missouri giving damages for vexatious refusal by insurance companies to pay policies is not repealed.

A verdict, the amount of which can be ascertained by a simple arithmetical calculation, and which includes every material fact at issue, will be sustained.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

The testimony of Mrs. Wilson and Huff was admitted only on account of its bearing on the question of vexatious delay. The matter testified to had none of the characteristics of "confidential overtures of pacification," and there is nothing from which to infer "that the parties agreed together that evidence of it should not be given." But even if technically inadmissible, it is difficult to see what harm was done the insurance company. An agent of the company went to Mrs. Wilson and in substance told her he wanted to settle by paying less than the face of her policy. She told him if she was entitled to anything she was to the whole, and refused

to entertain any proposition. He intimated that the policy was obtained by a misrepresentation of facts. This offended her and he apologized. Certainly we ought not to reverse the judgment for the admission of such testimony.

The exclusion of the testimony of Hoover could do no harm under the charge of the court upon that branch of the case. The jury were told in substance they must find for the company on the issue to which this testimony related, unless the person who took the application of Wilson and made it out was at the time the agent of this company and knew that the previous application, about which Hoover was called to testify, had been made and rejected. In this view of the case the excluded testimony was immaterial.

The general charge included all that the insurance company in its special requests asked. The language was not the same, but, if anything, the charge as given was more favorable to the company than that requested.

The exception to the charge as given is general. The charge embraced several distinct matters, most of which are not now objected to. This exception, therefore, was not well taken. Our decisions are uniform and numerous to the effect that "if a series of propositions are embodied in instructions and the instructions are excepted to in a mass, if any one of the propositions is correct, the exception must be overruled." *Johnston* v. *Jones*, 1 Black, 209, 220; *Beaver* v. *Taylor*, 93 U. S. 46, 54. Rule 4 of this court, promulgated more than twenty years ago, 21 How. vi., was intended to give substantial effect to this line of decisions, and requires of parties in excepting to the charge of the court to state distinctly the several matters to which they except.

Section 1, c. 90, of the General Statutes of Missouri, revised in 1865, which gives damages in actions against insurance companies for a vexatious refusal to pay policies, was not repealed by the acts of March 10, 1869, for the incorporation and regulation of insurance companies. Acts of 1869, pp. 26, 45. That section is not inconsistent with any of the provisions of the later acts, and repeals by implication are not favored. There is nothing in the new acts which relates to the same subject matter, and the presumption is, therefore, that it was intended this section should stand. Such was evidently the understanding of the legislature when it revised and promulgated the statutes of the State in 1879

under the provisions of the constitution, for the section is brought into the revision, not as a new enactment, but as an existing law. Rev. Stat. Missouri, § 6026.

The verdict is sufficiently certain to authorize the judgment. It is for the full amount of the policy, with six per cent interest, and ten per cent damages for vexatious delay. The amount of the policy and the date from which interest is to be calculated is stated in the petition and admitted in the answer. The amount of the judgment to be entered on the verdict can, therefore, be ascertained by simple arithmetical calculation, which may as well be done by the court as the jury. Every material fact at issue was found by the jury, and all the elements of the calculation to be made were indicated with sufficient certainty.

Judgment affirmed.

Mr. James Carr, *Mr. George D. Reynolds*, *and Mr. John R. Shepley* for plaintiff in error. *Mr. E. T. Farish* for defendant in error.

HAUENSTEIN *v.* LYNHAM.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

No. 133 of October Term, 1879. — Motion made in the case at October Term, 1880.— Decided November 22, 1880.

An officer of a State, sued in his official capacity, and charged with no official delinquency, is not liable for costs.

This was a motion to correct the judgment in *Hauenstein* v. *Lynham*, 100 U. S. 483. The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

This motion is denied. The defendant in error was sued in his official character, as escheator for the Commonwealth of Virginia. He was a public officer of the state, and he held the funds sued for in that capacity. He was charged with no official delinquency. Under such circumstances he cannot be made liable personally for the costs of the plaintiffs. The court below was right, therefore, in confining the judgment for costs to the funds in his hands as escheator.

Denied.

Mr. W. L. Royall for the motion.