and no more. The last clause in the contract was evidently added by way of limitation, so as to exclude from the sale any of the parcels specifically described which should be found to have been previously contracted to other parties. The order on the Commissioner of the Land Office in favor of Gibbs was for patents for the lands sold Risdon, as described in his contract. No other reasonable interpretation can be put on the language of that instrument. It follows that Gibbs took the title to all lands patented to him, and not included in the Risdon contract, in trust for the complainants.

If either Risdon or the other vendees of the complainants were proper parties to the suit, they certainly were not indispensable parties. The objection that they have not been joined in the suit comes, therefore, too late in this court. The claim that the complainants are not entitled to a decree because in some cases title was left in the State to avoid the payment of taxes, is frivolous.

The decree is affirmed, and it is so apparent the appeal was vexatious and for delay only, that we adjudge to the appellees five hundred dollars as just damages for their delay. While § 1010 of the Revised Statutes includes, in express terms, writs of error only, § 1012 provides that appeals from the Circuit and District Courts shall be subject to the same rules, regulations and restrictions as are or may be prescribed in law in cases of writs of error. This gives us authority to adjudge damages for delay on appeals as well as writs of error, and our power is not confined to money judgments only. *Affirmed.*

Mr. Alfred Russell and *Mr. Nathaniel Wilson* for appellant. *Mr. J. W. Stone* for appellees.

KAISER *v.* STICKNEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 90. October Term, 1880. — Decided December 13, 1880.

In the District of Columbia a valid note of the husband may be secured by a deed of trust of the general property of the wife, executed by husband and wife in the manner required by law.

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

It is very clear that the property in question was not, under the provisions of § 727 of the Revised Statutes of the District of Columbia, the sole and separate property of Mrs. Kaiser. She could

not, therefore, convey it, or contract with reference to it, "in the same manner and with the same effect as if she were unmarried," (§§ 728 and 729,) but it was her general property which she could convey by uniting with her husband in a deed executed in the form required by §§ 450, 451 and 452 of the same statutes. In this way she could charge her property with the payment of a debt, although she might not be able to bind herself individually. Her husband did unite with her in the execution of the deed under which the appellees claim, and the requirements of the law as to the form of execution were in all respects complied with. The note secured was valid as the note of the husband, and the deed was, therefore, binding. We have not overlooked the fact that Mrs. Kaiser, both in her original bill and in her answer to the cross-bill, has averred that her husband signed the deed only as a witness to her signature; but the fact was clearly otherwise. His signature is affixed both to the note and deed as maker, and his due execution of the deed was properly acknowledged before a competent officer. An attempt was made to prove that he was mentally incapable of entering into a contract, but the evidence falls short of establishing this fact, notwithstanding the wife in her testimony said he only did what she told him to do. We have no hesitation in deciding that the deed was well executed and that it binds the property for the payment of the debt it was intended to secure. It is not claimed, either in the original bill or in the answer to the cross-bill, that the Trust Company did not in fact loan on the faith of the security all the money the note calls for. Consequently, upon the case as made, the decree was properly rendered for the full amount of the note and interest, deducting only what was shown to have been paid.

It is insisted, however, that there is a variance between the proof and the allegations in the cross-bill, and that on that account there can be no recovery by the Trust Company in this suit. The objection is that in the cross-bill the property is proceeded against as the separate property of the wife, whereas the proof shows it to have been her general property. We do not so understand the effect of the pleadings. In the original bill the appellants sought to set aside the trust deed because it was executed by the wife alone for the conveyance of her general property, and, therefore, not binding. The appellees, on the contrary, in their cross-bill sought to enforce the deed because it was executed by both the husband and wife. The single point put in issue is the validity of the deed as a

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