

## Opinion of the Court.

For the reasons mentioned in the foregoing cases, the judgment of the Court of Claims in this case must also be

*Reversed, and the cause remanded for further proceedings not inconsistent with that opinion.*

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## DISTRICT OF COLUMBIA v. DICKSON.

## APPEAL FROM THE COURT OF CLAIMS.

No. 620. Submitted January 4, 1897. — Decided February 15, 1897.

*District of Columbia v. Johnson*, 165 U. S. 330, approved and again followed.

THE case is stated in the opinion.

*Mr. Assistant Attorney General Dodge* and *Mr. Special Assistant Attorney Howard* for appellant.

*Mr. V. B. Edwards* for appellee.

MR. JUSTICE PECKHAM delivered the opinion of the court.

In this case, which is of the same general nature as the foregoing cases, the petitioner, who was the assignee of one of the contractors, filed his original petition in the Court of Claims December 15, 1880. The case, after being heard, was submitted to that court on the 26th of May, 1882, and was by it dismissed on the 29th of May, 1882. On the 6th of April, 1895, the judgment was vacated and a new trial granted by virtue of the act of February 13, 1895. 31 C. Cl. 399.

The difference between the contract price and the board rate price was claimed, and Dickson, as assignee, was allowed to recover \$1386.30 for such difference, belonging to him by virtue of the assignment, and which sum the court held to have "been due and payable June 2, 1873, within the meaning and intent of the act of February 13, 1895, and the act of June 16, 1880."

## Statement of the Case.

For the same reasons as given in the foregoing cases, this judgment of the Court of Claims must also be

*Reversed, and the cause remanded with the same directions as in the other cases.*

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HOPKINS v. GRIMSHAW.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 18. Argued December 16, 17, 1895. — Decided February 15, 1897.

Notwithstanding the provisions of the acts of July 2, 1864, cc. 210, 222 (reënacted in Rev. Stat. § 858, and Rev. Stat. D. C. §§ 876, 877), a widow is incompetent to testify, in a suit which she is neither a party to, nor interested in, to a private conversation between her husband and herself in his lifetime; and a conversation between them in their own home, in the presence of no one but a young daughter, who does not appear to have taken any part in it, is a private conversation, within the rule.

The rule against perpetuities is inapplicable to a trust resulting to the heirs of a grantor upon the failure of an express trust declared in his deed.

By a deed of land from a private person to three others as trustees for a particular society, not incorporated, but formed for the mutual aid of its members when sick and for their burial when dead, to have and to hold to the trustees, "and their successors in office forever, for the sole use and benefit of the society aforesaid, for a burial ground, and for no other purpose whatever," the trustees take the legal estate in fee; and, when the land has ceased to be used for a burial ground, and all the bodies there interred have been removed to other cemeteries, by order of the municipal authorities, and the society has been dissolved and become extinct, the grantor's heirs are entitled to the land by way of resulting trust; and, after one of those heirs and the heirs of the trustees have conveyed their interests in the land to another person, the other heirs of the grantor may maintain a bill in equity against him to enforce the resulting trust, and for partition of the land, and for complete relief between the parties.

THIS was a bill in equity, filed May 24, 1889, against William H. Grimshaw, and against Mary J. Brooks, an heir of Stephney Forrest, by the other heirs of Forrest, and by "Horace S. Cummings, trustee," to enforce a resulting trust in, and to obtain partition of, land in the city of Washington, conveyed by Forrest to David Redden and others, trustees