

Stats., § 721. Congress has made no provision that governs the liability in this case and therefore has left it to the law of the State where the wrong is done. If there were no statute the common law of Massachusetts would supplement the Constitution as it would supplement the statutes of the State. But the common law of Massachusetts is not superior to its statutes and may be modified by them at the pleasure of the State, at least until in some substantial sense it impairs substantive constitutional rights, which it has not attempted to do. Whether in an otherwise proper case the proceeding given by the statute could be instituted in the District Court is not before us here. See *Ames v. Kansas*, 111 U. S. 449. *Madisonville Traction Co. v. Saint Bernard Mining Co.*, 196 U. S. 239.

*Judgments reversed.*

MR. JUSTICE PITNEY, being absent, took no part in the decision.

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JOHN L. WHITING—J. J. ADAMS COMPANY v.  
BURRILL, TREASURER AND RECEIVER-GEN-  
ERAL OF THE COMMONWEALTH OF MASSA-  
CHUSETTS.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MASSACHUSETTS.

No. 113. Argued January 26, 1922.—Decided February 27, 1922.

Decided upon the authority of *Burrill v. Locomobile Co.*, *ante*, 34.  
Affirmed.

*Mr. Charles L. Favinger*, with whom *Mr. Edward E. Blodgett* and *Mr. William P. Everts* were on the brief, for plaintiff in error.

*Mr. Wm. Harold Hitchcock* for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit like the two just decided, *ante*, 34, to recover taxes paid under the Act of 1909 there mentioned and St. 1918, c. 253. In this case as in the other the statutes provided a remedy that excluded an action against the Treasurer at common law. St. 1909, c. 490, Pt. III, § 70. St. 1918, c. 253, § 4. St. 1918, c. 255, § 7. The District Court gave judgment for the defendant on the merits. Without going into them it follows that the judgment must be affirmed.

*Judgment affirmed.*

MR. JUSTICE PITNEY, being absent, took no part in the decision.

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JONES *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 103. Argued January 20, 1922.—Decided February 27, 1922.

1. One who, in pursuance of a scheme to acquire the land for himself, procures others to make homestead applications and entries, knowing that they have no intention to establish residence or otherwise comply with the law and that their proofs to the contrary, made with his connivance, and upon the faith of which the patents are issued, are false, is guilty of defrauding the United States of the value of the land. P. 47.
2. The right of the United States to recover damages for such a fraud is not defeated by the facts that the period of residence stated in the entry proofs was insufficient to comply with the statute and that, but for a mistake of law in that regard upon the part of the Land Department, the patents would not have issued. P. 46.
3. In an action for fraud by inducing fraudulent entries resulting in patents, evidence that the defendant induced other entrymen to file on other land and of his conduct touching contracts on similar claims, is admissible as bearing on his knowledge and intent, if