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aimed at, is, that by the contiguity of the fore and hind wheels of each bearing carriage, and the swivelling motion of the trucks or bearing carriages, the planes of the flanches of the wheels conform more nearly to the line of the rails, and the lateral friction of the flanches on the rails, while entering, passing through, and leaving curves, is thereby diminished; while at the same time, in consequence of the two bearing carriages being arranged and connected with the body of a passenger or burden car, by means of the king bolts or centre pins and bolsters, placed as remotely from each other as may be desired or can be conveniently done, and with the weight bearing upon the *central* portion of the bolsters and bearing carriages, the injurious effects of the shocks and concussions received from slight irregularities and imperfections of the track, and other minute disturbing causes, are greatly lessened."

The remarks of the court about the want of a disclaimer, where the patent claimed too much, though correct as a general statement of the law, could have little bearing on the present case, where the disclaimer, to be effectual, would include the whole invention claimed.

It is abundantly evident, therefore, that the court having given a correct construction to the patent, there could be no error in refusing to give a different one, or in refusing to admit testimony which, under this construction, was wholly irrelevant to the issue on which the jury were about to pass.

The judgment of the Circuit Court is therefore affirmed, with costs.

Mr. Justice DANIEL dissents, on the ground of a want of jurisdiction.

THE COMMONWEALTH OF PENNSYLVANIA, PLAINTIFF IN ERROR, *v.*
WILLIAM RAVENEL, EXECUTOR OF ELIZA KOHNE, DECEASED.

The question of domicile, so far as it depends upon the facts, is one for the jury. But it was proper for the court to instruct the jury what constituted a domicile in law; and to say, further, that as the husband had his domicile in Pennsylvania at the time of his death, the domicile of the widow remained also in Pennsylvania. Whether or not she afterwards changed it to South Carolina, was a ques-

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tion for the jury, to be decided by the evidence. If they believed this evidence, then the domicil of the widow was in South Carolina.

Her acts and declarations, continued for many years, were to be received as evidence of this choice upon her part.

[MR. JUSTICE WAYNE DID NOT SIT IN THIS CAUSE.]

THIS case was brought up by writ of error from the Circuit Court of the United States for the eastern district of Pennsylvania.

It was an action brought by the State of Pennsylvania to recover the sum of \$5,820.23, a collateral-inheritance tax, alleged to be due from the estate of Mrs. Kohne. It was admitted, that unless her domicil was in Pennsylvania, the tax was not due.

The following statement of facts was made by the counsel for the Commonwealth, with the exception of the early history of Mrs. Kohne, which was this, according to the testimony of Mr. Pettigru :

"She was born in Charleston, her father and mother being natives of that place. She never went away till after the fall of Charleston, in 1780. Her father was then taken off as a prisoner to St. Augustine, and her mother took refuge in Philadelphia, where she and her daughter continued until the cessation of hostilities; they then returned to Charleston, where she resided without interruption until her marriage. In May, 1807, she married Frederick Kohne, then and for many years previously a resident of Charleston, where they resided at first all the year, and afterwards alternately between that place and Philadelphia."

Statement of Facts on the part of the Commonwealth.

Mr. Kohne, the husband of Mrs. Eliza Kohne, died in Philadelphia on the 26th day of May, 1829, and was buried there. He was domiciled in Philadelphia at the time of his death, which place was therefore the domicil of his widow at that time. Mr. Kohne, at the time of his death, owned valuable real and personal estate in Philadelphia city and county, and also in Charleston, S. C. Among the Philadelphia property

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was a large and elegant mansion house in Chestnut street, built by Mr. Kohne in 1819, and in which he resided with his wife from that time until his death in 1829, except when he visited Charleston, S. C., where he and she usually spent the winter, leaving Philadelphia about October or November, and returning about May. They did not, however, continue these visits to Charleston during the last few years of Mr. Kohne's life, owing to ill health, or other causes, but remained altogether in Philadelphia. Mr. Kohne, at the time of his death, also owned a mansion in Charleston, S. C., in which he and his wife resided during the winter, as already stated. Both mansions were furnished with servants, furniture, plate, &c. Mr. Kohne also owned, at the time of his death, a valuable country seat, with thirty acres of land attached, close to the city of Philadelphia, in Turner's Lane, and now within the corporate limits of that city, which was purchased by him in 1807, about the time of his marriage, and during his lifetime was sometimes occupied by Mr. and Mrs. Kohne, and by Mrs. K. after his death.

Mr. Kohne devised his real estate, wherever situate, to his wife for life, (with some exceptions in Charleston, S. C.) Her life interest extended to the mansions referred to in Philadelphia and Charleston, and to the Turner's Lane property in Philadelphia.

She did not visit Charleston the winter after her husband's death, but spent a part of it in Savannah. After that winter, however, she resumed the routine which had existed some years prior to her husband's death—that is, of spending from May to October in Philadelphia, and from November to May in Charleston.

After Mr. Kohne's death, in 1829, Mrs. Kohne had his body interred in ground belonging to Christ Church, Philadelphia, and she had the grave constructed large enough for two persons beside each other—doubtless anticipating and providing for what occurred twenty-three years afterwards, her own interment by his side. She was an old member of that church, and had a right to be buried in any part of the ground. Eight years after her husband's death, Mrs. Kohne, in 1837, bought

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a lot in Laurel Hill Cemetery, in which she had some one buried, and which she owned at her death.

In the same year, 1837, her real and personal property assessed for taxes in Philadelphia included the mansion in Chestnut street, assessed at \$27,600, eight shares South Carolina bank stock, stock in other States, &c. These stocks would not have been subject to taxation under the Pennsylvania law, unless she had been domiciled in Pennsylvania, and she continued to pay taxes on them and similar stocks down to the time of her death, in 1852.

In 1839, she purchased a dwelling-house and lot of ground in Philadelphia, and the conveyance describes her as Eliza Kohne, of the same city, (viz: Philadelphia,) widow. This conveyance she refers to in her will, in devising the property to Susan Ingles, one of her servants.

Mrs. Kohne continued to reside alternately in Charleston and Philadelphia, according to the season of the year, until April 30, 1850, when she left Charleston, to return there no more, and came to Philadelphia, followed soon after by her whole Charleston household, (except one old female servant,) all of whom remained with her in Philadelphia until her death, March 16, 1852, and none of them returned to Charleston during her life. These were Emma and her husband, Jacob, Peter, Margaret, and Carolina, servants or slaves.

Mr. Frederick Kohne's name is found in the Philadelphia Directories from 1814, and Mrs. Eliza Kohne's from 1830 to 1852.

When the cause came on for trial, there was much evidence given upon both sides, when the court instructed the jury as follows:

"That a question of domicil was one of mixed law and fact. That it was for the court to instruct the jury what constituted domicil, and for the jury to apply the principles of law laid down by the court to the facts as found by them, and thus render a true verdict on the issue they were sworn to try; that the jury had no right to disregard the law as stated by the court, and the court had no right to dictate to them on the

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facts which they were bound to find on their own responsibility.

“The court then proceeded to define the meaning of the word domicile, and the principles of law on the subject, reading from their charge on the Aspden case such parts of it as had a proper application to the general question and were applicable to this case. That charge is found in *White v. Brown*, (1 Wallace, jun.) In application of these general principles of the law to this case, the court stated that it had been affirmed that the domicile of Frederick Kohne was Pennsylvania, because, for three or four years before his death, he had been unable to return to his house in Charleston, had died and was buried in Philadelphia, and called himself, in his will, ‘Frederick Kohne, of the city of Philadelphia.’ Under these circumstances, it appears his executors did not see fit to dispute his domicile, but submitted to pay the collateral-inheritance tax; that, notwithstanding all this, it was not a very clear case that his domicile was in Pennsylvania, had his executors seen fit to dispute it. But for the purposes of this case, we should assume that fact; that, from the legal unity of husband and wife, her domicile was necessarily his while the marriage existed; after his death, she was free to choose her own domicile. If the jury find, that after his death she returned to her former domicile in Charleston, took possession of the house and servants devised to her; lived in that house six or seven months of every year, calling it her home, spending only a few weeks in the spring and fall in her house here, and the remainder of the summer at watering-places; coming north in the summer for the sake of her health, always intending to return to her house in Charleston; that she was hindered returning the last time from sickness; if she consulted counsel how she might avoid giving any pretence to the tax-gatherers of Pennsylvania to treat her as domiciled here; if she carefully denied at all times her citizenship in Philadelphia, even to erasing it from printed lists of her church donations, as the assertion of a falsehood; if she refused to have some of her furniture removed here, for fear such a fact would be seized upon after her death for the purpose of asserting her domicile here; if she called herself, in her will, ‘of

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Charleston; if, when absent from that place, she always spoke of returning to it as her home, and did return to it as such, till hindered by sickness—if the jury believed this evidence of defendant's witnesses, testimony which has not been contradicted or denied, it would be absurd to say her domicile was not where she asserted it to be, to wit, in the city of Charleston. It is true, the mere speaking of a place as home, in the cant language of the Canadians and other provincials, without any act showing an intention of returning to it, would amount to nothing. But if the acts and the language concur, as proved by these witnesses in this case, it would be a denial to the deceased of the right to choose her own domicile, not to allow her acts and declarations, continued for many years, to be conclusive of the fact."

Exceptions were taken to parts of this charge, and the case came up to this court.

It was argued by *Mr. Scott* and *Mr. Hood* for the plaintiff in error, and by *Mr. Gerhard* for the defendant.

The points stated by the counsel for the plaintiff in error were the following:

1. That the court charged the jury as to part only of the evidence, viz: that for the defendant.
2. That the court charged the jury as to facts of which there was no evidence.
3. That, in effect, the court took from the jury the sole material fact in the cause, viz: the domicile of Mrs. Kohne at the time of her death.

In order to sustain these points, it was necessary for the counsel for the plaintiff in error to establish two propositions:

1. To show, from an examination of the evidence, that the instructions of the court were in opposition to or not sustained by it.
2. That this was an error to be corrected by this court; and in support of this proposition they cited numerous authorities. But as this court was of opinion that the first proposition was not made out, it is not necessary to recite the authorities in support of the second.

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Mr. Gerhard denied both propositions as stated above, but his authorities are omitted for the same reason.

Mr. Justice NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the eastern district of Pennsylvania.

The action was brought by the State of Pennsylvania against the defendant, executor of the late Mrs. Kohne, to recover the sum of \$5,820.23, called a collateral-inheritance tax, assessed upon the personal estate of the testatrix. By the law of Pennsylvania, where the property of the deceased passes to his or her collateral heirs, or to strangers, either by the law concerning intestate estates, or by will, it is made subject to a specific taxation for the benefit of the State. This tax is five per centum on the clear value of the estate. (*Brightly v. Purdon*, p. 138; act 22d April, 1846, sec. 14.) And according to the construction of these acts imposing the tax, it is held, if a decedent be domiciled in the State at the time of his or her death, stocks of other States, or of corporations of other States, and debts due in other States, in the hands of the executors or administrators, are liable to this tax. (4 Harris's Rep., 63; 18 Howard's Rep.)

But if the domicil of the deceased be not in Pennsylvania, then the estate is not subject to the tax.

Mrs. Kohne died in the city of Philadelphia in March, 1852, and the question in the court below was, whether or not she was domiciled in Pennsylvania at the time of her death, or in the State of South Carolina. The jury, under the charge of the court, found a verdict for the defendant.

The case is before us on four exceptions taken to the charge of the court.

The first three it is not material to notice further than to say, that the two first are founded upon a misapprehension of the instructions given to the jury; and the third is not maintainable, as the instruction in the connection in which it is found is unobjectionable.

The fourth exception is, that the court, in the charge, took the fact of domicil from the jury.

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This exception, we think, is founded in a misapprehension of the instructions given. The court, after stating to the jury that the question of domicile was one of mixed law and fact, observed, that it was for the court to instruct them what constituted a domicile, and for the jury to apply the principles of law governing it to the facts as found by them; that the jury had no right to disregard the law as laid down by the court, and the court had no right to dictate to them as respected the facts, which they must find on their own responsibility. The court then stated to the jury the principles of law applicable to the question of domicile, to which no exception has been taken. Also, that as it had been admitted Mr. Kohne, the husband, who died in Philadelphia in 1829, had his domicile in Pennsylvania at the time of his death, the domicile of the wife must be taken as in that State at the time, and submitted the question whether or not she had since changed it to the State of South Carolina; and then, after referring to the leading facts given in evidence, and relied on to establish a change of domicile, observed, that if the jury believed this evidence, the domicile of Mrs. Kohne was in South Carolina.

The court further say, that the mere speaking of a place as a home, without any act showing an intention to return to it, would amount to nothing. But if acts and the language concur, as proved by the witnesses in the case, it would be a denial to the deceased of the right to choose her own domicile, not to allow her acts and declarations, continued for many years, to be conclusive of the fact.

We perceive nothing in the instructions of the court, or in the view of the case as presented to the jury, by which the question of domicile, so far as it depended upon the facts, was taken from the jury. The evidence was very strong in support of a change of domicile by Mrs. Kohne after the death of her husband, and, if believed by the jury, it was not too much to say, as matter of law, that they should find for the defendant.

The judgment of the court below is affirmed.

Mr. Justice DANIEL, dissenting.

I cannot concur in the opinion of the court in this case.

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Had I been acting as a juror upon the trial of this cause, it is more than probable that the conclusion formed by the jury upon the evidence disclosed by the record is identical with that at which I should have arrived. And, further, had it been within the legitimate province of the court, in the attitude of the case before it, to declare what ought to be the deductions from facts either established in evidence, or presumed or supposed by the court to have been established, or even from facts admitted by the parties on the trial, then exception to the charge of the court in this case could not properly be taken. The objection to the charge, and a fatal objection to my mind, arises from the principle that the court had no authority to pass upon or to give any opinion in relation to facts, either established by testimony or admitted or presumed, as to what those facts amounted to, or as to the correctness or the absurdity of any deduction which the jury might draw from them. The power of the court was limited absolutely to the legality or relevancy of the testimony. The weight or effect of the testimony, or the deductions to be drawn from it, were peculiarly and exclusively within the province of the jury; and the court had no power to inform them, or intimate that evidence, either exhibited in reality or presumed, should be construed in any particular way, or to say to them *a priori* that an interpretation different from that of the court, as to the weight of evidence, would be absurd. Should the conclusion of the jury upon the weight of evidence be never so absurd, still it is the peculiar province of the jury to weigh that evidence, and to draw their own independent inferences from it; and the only legitimate corrective is to be found in the award of a new trial, or by a case agreed, or a demurrer to evidence. If the court can *a priori* direct the jury what the evidence, either made out in proof or hypothetically stated, really amounts to, the trial by jury becomes a cumbersome formality, and had as well, nay, had better be dispensed with, inasmuch as in the solemn administration of justice there should be as little that is useless, burdensome, or pretended, as possible. To show the character of that portion of the charge of the court regarded as exceptionable, it is here inserted, as follows, viz:

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"If the jury find, that after his death (the death of the husband) she (Mrs. Kohne) returned to her former domicil in Charleston, took possession of the house and servants devised to her, lived in that house six or seven months of every year, calling it her home, spending only a few weeks in the spring and fall in her house here, and the remainder of the summer at watering-places; coming north in the summer for the sake of her health, always intending to return to her house in Charleston; that she was hindered returning the last time from sickness; if she consulted counsel how she might avoid giving any pretence to the tax-gatherers of Pennsylvania to treat her as domiciled here; if she carefully denied at all times her citizenship in Philadelphia, even to erasing it from printed lists of her church donations, as the assertion of a falsehood; if she refused to have some of her furniture removed here, for fear such a fact would be seized upon, after her death, for the purpose of asserting her domicil here; if she called herself, in her will, 'of Charleston;' if, when absent from that place, she always spoke of returning to it as her home, and did return to it as such, till hindered by sickness—if the jury believed this evidence of defendant's witnesses, testimony which has not been contradicted or denied, it would be absurd to say her domicil was not where she asserted it to be, to wit, in the city of Charleston."

Regarding this portion of the charge as tending to confound the powers of the court and the jury, I think that the judgment of the Circuit Court should be reversed, and the case remanded for a new trial.

THE COVINGTON DRAWBRIDGE COMPANY AND RICHARD M. NEBEKER, APPELLANTS, *v.* ALEXANDER O. SHEPHERD AND OTHERS.

The decision of this court in 20 Howard, 227, as to what averment in the declaration is sufficient to give jurisdiction to the courts of the United States, again affirmed.

Where there was a judgment at law against a bridge company, under which the tolls were sold in execution, a court of equity has power to cause possession to be taken of the bridge, to appoint a receiver to collect tolls, and pay them into court, to the end of discharging the judgment at law.