10th, 1854, which was more than a month after Gee filed his claim and accompanying proofs. And to make it more evident that it is not an easy task to make an accurate description of the lands really granted, we learn further that additional lists were afterwards certified to the State, in aid of said railroad, from time to time, and as late as the 15th of November, 1859.

It is contended that the legislature of Missouri had no power to grant the privileges of pre-emption. If this was a contest between the United States and the State of Missouri, the question of power would be a proper subject for examination. But the United States are not complaining, and no other party has a right to complain. If the act of the legislature imposed burdens, it nevertheless conferred great privileges, and if any right to object existed, it was waived when the company filed their acceptance with the Secretary of State.

It follows that the court below committed no error in holding "that the location of the land in question by the Hannibal and St. Joseph Railroad Company was not complete, as regards this defendant, until said company caused a map thereof to be recorded in the office for recording deeds in the county in which said land is situated."

JUDGMENT AFFIRMED WITH COSTS.

LEE ET AL. v. WATSON.

When, to authorize the re-examination of a final judgment of the Circuit Court, the matter in dispute must exceed the sum or value of $2000, that amount—if the action be upon a money demand and the general issue be pleaded—must be stated both in the body of the declaration and in the damages claimed, or the prayer for judgment. When the amount alleged to be due in the body of the declaration is less than $1000, an amendment merely in the matter of amount of damages claimed, so as to exceed $2000, will not give jurisdiction to this court, and enable it to review the final judgment in the case.

LEE and Leavit brought assumpsit in the Circuit Court for the Kentucky District, against Watson, declaring on a

promissory note for $610, with a count for $1000 money due for goods sold; $1000 money had and received; $1000 money due on account stated, &c. What damages exactly were claimed in the *narr.* as originally filed, did not clearly appear, but they were obviously less than $2000. Demurrer was put in to one part of the declaration and *non assumpsit* pleaded to the residue, and the court having sustained the demurrer, the record proceeded thus:

"On motion of the plaintiffs, and by consent of the defendants, leave is given plaintiffs to amend their declaration by striking out the amount of damages claimed in this cause, and insert $2100, which is done accordingly, and the declaration so amended."

A jury having been summoned to try the issue raised by the plea of non assumpsit to the money counts, a verdict was found by them for the defendants; whereupon the plaintiff having taken a bill of exceptions on the trial, applied for and obtained a writ of error to this court, under that section of the Judiciary Act which provides that final judgments in a Circuit Court, when the matter in dispute exceeds the sum of $2000, may be re-examined here;* the judge, however, who had heard the case and who allowed the writ, making this indorsement upon it:

"It was not without hesitation that the bill of exceptions was allowed, and this writ of error is now sanctioned. The writ and original declaration showed that the amount in controversy did not exceed $1000; the evidence offered on the trial by the plaintiffs showed that it did not exceed $700; and if the increase of the damages by the amendment of the declaration was intended for the sole purpose of giving the Supreme Court jurisdiction, the question is whether it ought to be allowed such effect. I however concluded that the counsel may proceed, because in this mode the question will be most conveniently presented where it will be at once and finally determined."

The question in this court now was whether the writ could

* See *ante*, Ryan *v.* Bindley, p. 67.

be sustained; a matter which was argued by *Messrs. Lee and Fisher for the plaintiffs in error, and by Mr. Fendall contra.*

Mr. Justice FIELD delivered the opinion of the court:

It appears from the certificate of the presiding judge of the court below, indorsed on the writ of error, that the writ and original declaration in the case showed that the amount in controversy did not exceed one thousand dollars, and that the evidence offered by the plaintiffs at the trial showed that it did not exceed seven hundred dollars; and that in the progress of the cause an amendment was made in the amount of damages claimed, for the purpose of bringing the case within the appellate jurisdiction of this court. It is hardly necessary to add that upon the facts thus stated—and the correctness of the certificate is not questioned—the court will not entertain jurisdiction of the case.

To authorize a re-examination of a final judgment of the Circuit Court, the matter in dispute must, with some exceptions, exceed the sum or value of two thousand dollars. By matter in dispute is meant the subject of litigation—the matter for which the suit is brought—and upon which issue is joined, and in relation to which jurors are called and witnesses examined. In an action upon a money demand, where the general issue is pleaded, the matter in dispute is the debt claimed, and its amount, as stated in the body of the declaration, and not merely the damages alleged, or the prayer for judgment at its conclusion, must be considered in determining the question whether this court can take jurisdiction on a writ of error sued out by the plaintiff. It certainly would not be pretended that this court would hear a case where the plaintiff counted solely upon a promissory note of two hundred dollars, simply because he concluded his declaration with an averment that he had sustained damages from its non-payment of over two thousand, and prayed judgment for the latter sum. Reference must be had both to the debt claimed and to the damages alleged, or the prayer for judgment. The damages or prayer for judgment must be regarded, inasmuch as the plaintiff may seek a recovery

for less than the sum to which he appears entitled by the allegations in the body of the declaration.

Taking in the present case the certificate of the judge below as correct, the amount in controversy—that is, the debt alleged in the original declaration—did not exceed one thousand dollars; the jurisdiction is not therefore acquired by this court from the amendment in the amount of the damages claimed. The writ of error is

DISMISSED.

BLOOMER *v.* MILLINGER.

1. A grant of a right by a patentee to make and use, and vend to others to be used, a patented machine, within a term for which it has been granted, will give the purchaser of machines from such grantee the right to use the *machine patented* as long as the machine itself lasts; nor will this right to use a machine cease because an extension of the patent, not provided for when the patentee made his grant, has since been allowed, and the machine sold has lasted and is used by the purchaser within the term of time covered by this extension; the rule being distinguishable from that applied to the assignee of the right to *make and vend* the thing patented, who holds a portion of the franchise which the patent confers, and whose right of course terminates with the term of the patent, unless there is a stipulation to the contrary.
2. *Bloomer* v. *McQuewan* (14 Howard, 539), and *Chaffee* v. *The Boston Belting Co.* (22 Id., 217), approved.
3. How far parol proof may be introduced to show verbal agreements of the parties at the time when deeds were executed, and so to prove mistake or fraud in not executing what it was understood should be executed. The question raised on argument, but not decided by the court.

BLOOMER, the appellant here, filed a bill in equity in the Circuit Court for the Western District of Pennsylvania. He set forth in it that he was owner of the exclusive right to make and use, and vend to others to be used, within the county of Alleghany, in Pennsylvania, the patented planing machine of Woodworth; that subsequently *to the 27th December*, 1849, and about the 1st January, 1850, the respondent, Millinger, had put in operation in that county, three of these machines, and was continuing to use them without any law-