

testimony established what the bill of exceptions declares it tended to prove. The court, therefore, in telling the jury peremptorily, on this testimony, that the license to Lowe did authorize him to use the Singer machine with a feeding device operating upon the principle and plan of that patented by Wilson, took away from the jury the right to weigh that testimony. If the judge had said, that, *if they believed these facts to be established*, then the license to Lowe authorized the use of the Wilson device in the Singer machine, we would affirm the judgment; but because he, in this respect, assumed a function which belonged to the jury, and for that reason alone, the

Judgment must be reversed and a new trial awarded.

McSTAY ET AL. v. FRIEDMAN.

Where, in ejectment for a part of the lands confirmed to the city of San Francisco by an act of Congress, the validity and operative effect of which were not questioned, the judgment of the Supreme Court of the State of California was adverse to the defendant, who endeavored to make out such possession as would, under the operation of the city ordinance and the act of the legislature, transfer, as he claimed, the title of the city to him, — *Held*, that this court has no jurisdiction.

MOTION to dismiss a writ of error to the Supreme Court of the State of California.

Mr. Aaron A. Sargent for the defendant in error, in support of the motion.

Mr. W. Irvine, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This was an action of ejectment brought by Friedman to recover the possession of a certain parcel of the Pueblo lands confirmed to the city of San Francisco by the act of Congress passed March 8, 1866 (14 Stat. 4). He did not attempt to connect himself with the city title, but relied entirely upon his alleged prior possession and that of his grantors.

The defendants, who are the plaintiffs in error, set up in their answer, as defences, (1) adverse possession, with specifi-

cations to bring themselves within the operation of the Statute of Limitations; and (2) the title of the city of San Francisco under the act of Congress, and an assignment of that title to themselves, pursuant to the provisions of an ordinance of the city and an act of the legislature of California.

At the trial no question was raised as to the validity or operative effect of the act of Congress. The effort on the part of the plaintiffs in error seems to have been (1) to establish their defence under the Statute of Limitations; and (2) to prove such possession as would, according to their claim, transfer the city title to them under the operation of the city ordinance and the act of the legislature.

No Federal question was involved in the decision of the Supreme Court. The city title was not drawn in question. The real controversy was as to the transfer of that title to the plaintiffs in error; and this did not depend upon the "Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States." The case is, therefore, in all essential particulars, like that of *Romie et al. v. Casanova*, 91 U. S. 379; and the writ must be

Dismissed for want of jurisdiction.

HAMMOND ET AL. v. MASON AND HAMLIN ORGAN COMPANY.

1. A contract concerning the use of a patented invention bound the "parties and their legal representatives to the covenants and agreements of the contract." A plea alleged that the defendants "are the legal representatives and successors and assignees in business and interest" of one of the parties. The question being on the sufficiency of this plea, *Held*, that the defendants were the legal representatives of that party within the meaning of the contract.
2. An allegation that L. refused to manufacture and furnish his invention as he had agreed to do, is equivalent to an allegation of a demand on him to do so, and a refusal.
3. Where an inventor signed several different agreements with the same party, on the same day, for the sale of his invention and for a license to use it, they must all be construed together; and if it is apparent that he intended to convey the right to use a new invention in connection with former patents, under any renewal or extension of the former, the grantee or assignee is protected, though the improvement was never patented, and though the