

passed by it: it was not a grant by the government. If, on the other hand, the collector's deed under which the plaintiff claims is valid, that under which the defendants claim is also valid, and, as we have already seen, gives the defendants the better title.

*Judgment for the defendants.*

BLODGETT, J., did not sit: the others concurred.

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ROCKINGHAM.

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LANG & a. v. LYNCH.

The third clause of section 639 of the U. S. Rev. Sts., which relates to the removal of causes to the federal courts on account of prejudice or local influence, was not repealed by the act of congress of March 3, 1875, and is still in force.

PETITION by the plaintiffs, who are citizens of Pennsylvania, for the removal of the cause to the circuit court of the United States on the ground of prejudice and local influence. The petition, with a bond, and the affidavit of one of the plaintiffs in due forms, stating the facts necessary to bring the case within the terms of the third clause of s. 639, U. S. Rev. Sts., were filed at the April term, 1884. The cause was entered at the October term, 1883, and has been pending in court since that time without any trial being had. The defendant objected that the petition was too late, and that the third clause of s. 639, U. S. Rev. Sts., was repealed by the act of congress of March 3, 1875.

*John Hatch*, for the plaintiffs.

*Frink & Batchelder*, for the defendant.

CLARK, J. The right to remove a cause in which there is a controversy between a citizen of the state in which the suit is brought and a citizen of another state, from a state court to the circuit court of the United States, on the ground of prejudice or local influence, is given to the non-resident party by the third clause of s. 639, U. S. Rev. Sts., which is a reproduction of the act of congress of March 2, 1867. Under this act the petition for removal, accompanied with an affidavit that the petitioner has reason to believe and does believe that from prejudice or local influence he will not be able to obtain justice in the state court, may be filed at any time before the final hearing or trial of the

cause, unless the provision of the statute of 1867 is repealed by the act of congress of March 3, 1875. This question is settled by the decision of the supreme court of the United States in the recent case of *Hess v. Reynolds*, 113 U. S. 73. It is there held that the act of March 3, 1875, to determine the jurisdiction of the circuit courts and regulate the removal of causes from state courts, does not repeal or supersede all other statutes on those subjects, but only such as are in conflict with it; that the third clause of s. 639 of the Rev. Sts. is not abrogated or repealed, and that an application for removal under that clause may be made at any time before the trial or final hearing of the cause in the state court.

*Petition granted.*

ALLEN J., did not sit: the others concurred.

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WENTWORTH *v.* ROCHESTER.

In an action upon the statute of highways, a town is not estopped to deny the existence of a highway not established in a statutory method.

CASE, on the statute for damage happening to a traveller. The alleged highway was not laid out in the mode prescribed by statute, and has not been used twenty years for public travel. For several months prior to the accident the town was engaged in erecting a bridge over the Cocheco river on the main road, and during all that time caused guide-boards to be erected and maintained along the main road, directing the travel over the way in question. The plaintiff travelled over the way by reason of said directions.

*G. N. Eastman*, for the plaintiff.

*Worcester & Gafney*, for the defendants.

CARPENTER, J. *Tilton v. Pittsfield*, 58 N. H. 327, is affirmed.

*Nonsuit.*

ALLEN, J., did not sit: the others concurred.

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JENKINS, *Ex'r*, & *a.* *v.* FOWLER & *a.*

If a will contains no residuary clause, and it is manifestly the testator's intention to dispose of all of his property, the words "all my moneys after paying all my just debts" may pass deposits in a savings-bank, and railroad stock, not specifically devised.