of the plaintiff in the common estimation of mankind, expose him to contumely, or make him contemptible or ridiculous. If it is, it is libelous, although it imputes no crime. Undoubtedly, a man may mysteriously disappear while holding a position of trust and prominence, secrete himself for several months, and then be found living lavishly in a foreign country, who has not offended the civil or criminal laws, or been guilty of any immoral or discreditable conduct. On the other hand, it is a matter of common knowledge that those of our countrymen who expatriate themselves under such circumstances in Canada are frequently fugitives from justice. So often is this the case that it is not too much to say that the first impression upon reading a paragraph like this would be that the person referred to in it had been guilty of some breach of trust, and joined the colony of American embezzlers and defaulters who have found a haven of refuge, safe under the extradition laws, among our Canadian neighbors. It was said by De Grey, C. J., in King v. Horne, Cowp. 672: "A man is not allowed to defame in one sense, and defend himself in another." Whether a libelous sense or an innocent sense is to be attributed to the present publication must be determined by a jury, under proper legal instructions. The court cannot undertake to say, as a matter of law, in which sense the words are to be understood.

Matters of common knowledge do not require proof, but the courts take judicial notice of them. If, in the light of such knowledge, the publication is capable of a libelous meaning upon its face, the complaint states a good cause of action, notwithstanding no extrinsic facts are set forth explanatory of the language used.

The demurrer is overruled, with costs.

AMERICAN EXCHANGE NAT. BANK v. OREGON POTTERY CO.

(Circuit Court, D. Oregon. June 10, 1892.)

No. 1,930.

1. NEGOTIABLE INSTRUMENTS — FRAUD — BONA FIDE PURCHASER — BURDEN OF PROOF.
   Where a promissory note has its inception in fraud, the burden of proof is cast upon a subsequent indorsee to show that he is a bona fide holder for value.

2. SAME — CORPORATION — AUTHORITY OF OFFICERS.
   The president and secretary of a corporation are presumed to have authority to execute a promissory note in the name of the corporation, and the holder of such note will not be affected by the fact that such authority did not exist unless he is shown to have had notice thereof.

At Law. Action by the American Exchange National Bank of New York against the Oregon Pottery Company on a promissory note. Heard on demurrer to the answer. Overruled in part and sustained in part.

Milton W. Smith, for plaintiff.
Albert H. Tanner, for defendant.

GILBERT, Circuit Judge. This action is brought to recover upon a promissory note made by the defendant, by its president and secretary, to the order of one C. C. Gilman, and by him indorsed to the plaintiff before maturity. The answer sets up two defenses, each of which is demurred to: First, that the note was procured by fraud, and was without consideration; second, that the president and secretary of the defendant had no authority from the defendant, either by by-law or resolution, to execute the note, and that the defendant received no benefit therefrom, and did not ratify the same.

It is admitted that the first defense contains allegations of fraud sufficient to defeat the note as between the original parties to the same, but it is contended that the demurrer should be sustained for the reason that the answer contains no averment that the plaintiff had notice of the fraud or acquired the note otherwise than as a bona fide indorsee for value. The doctrine seems well established that where a promissory note had its inception in fraud or duress, or is fraudulently put in circulation, an exception arises to the general rule, and the burden of proof falls upon a subsequent indorsee to show that he took the note before maturity, and for value, and without notice. Kellogg v. Curtis, 69 Me. 212; Smith v. Livingston, 111 Mass. 342; Vosburgh v. Diefendorf, 119 N. Y. 357, 23 N. E. Rep. 801; Stewart v. Lansing, 104 U. S. 505. The reason generally assigned for this exception to the rule is that a presumption exists that a fraudulent payee will place the note out of his hands, to have suit brought in the name of another, and such presumption operates against the holder. The demurrer to the first defense is overruled.

The demurrer to the second defense, however, is well taken. The payee or indorsee of a negotiable promissory note, signed by the officers of a corporation as the note of the corporation, is not required to ascertain whether the officers have authority to make the note. A corporation formed under the general incorporation laws, for the purpose of conducting business, has, so far as the law is concerned, the same power that an individual has to contract debts whenever necessary or convenient in furtherance of its legitimate objects. It may borrow money to pay its debts. It may execute notes, bonds, and bills of exchange. The power to sign such paper may be conferred upon any officer. If the president and secretary sign, their authority is inferred from their official relation. All persons dealing with them have the right to assume that there is no restriction of that authority. They also have the right to assume, unless they have actual notice to the contrary, that a note so signed is made in the regular course of the business of the corporation. To hold otherwise would destroy the negotiability of all notes made by corporations. Merchants' Bank v. State Bank, 10 Wall. 644; Crowley v. Mining Co., 55 Cal. 273; 1 Daniel, Neg. Inst. § 381. In the absence of an allegation that the president and secretary of this corporation were deprived of power to make this promissory note, and that that fact was known to the payee of the note and the plaintiff before they became holders of the paper, the demurrer to this defense must be sustained.

HYATT v. CHALLISS et al.

(Circuit Court, D. Kansas. April 11, 1893.)

No. 6,634.

EJECTMENT—SECOND TRIAL AS OF RIGHT—SUIT IN FEDERAL COURT.

An action of ejectment was brought in a state court, and, the trial having resulted in a judgment for the defendant, the plaintiff moved, pursuant to Gen. St. Kan. § 4702, for a second trial as of right. The judgment was vacated, and a new trial ordered. The cause was continued until the next term, and, when it was then called for trial, plaintiff dismissed the action. Thereafter he commenced a similar action in the federal court. *Held* that, electing to litigate his rights in the state court, having had one trial therein, and having demanded a new trial, and procured the judgment against him to be set aside without costs under the statute, plaintiff had thereby waived his right to bring suit in the federal court, and that the action must be dismissed.

At Law. Action of ejectment by Thaddeus Hyatt against George T. Challis and others. Dismissed.

L. F. Bird, for plaintiff.
Elliston & Heath, for defendants.

RINER, District Judge. This is an action of ejectment. The action was originally brought in the district court for the county of Atchison, and a trial upon the merits was had in that court. On the 28th day of January, 1888, a judgment was rendered in favor of the defendant Challiss. Thereupon the plaintiff and certain other defendants (under the statute of Kansas) caused a notice to be entered on the journal that they applied for an order setting aside and vacating the said judgment, and granting another trial of the case. The statute under which these proceedings were had is in the following language:

"In an action for the recovery of real property, the party against whom judgment is rendered may, at any time during the term at which the judgment is rendered, demand another trial by notice on the journal, and thereupon the judgment shall be vacated, and the action shall stand for trial at the next term." Section 4702, Gen. St. Kan.

Section 4703 provides:

"No further trial shall be had in such action, unless for good cause shown a new trial be granted, or the judgment reversed, as in other actions."

After obtaining the new trial upon demand, as provided by the statute, the cause was continued until the next term of the court, and upon being called for trial at the next term, to wit, on the 9th day of September, 1889, the plaintiff declined to proceed to trial, but dismissed his action, and thereafter, on December 3, 1890, brought his action in this court. These proceedings were all made to appear by the answer of the defendant Challis in this action, a transcript of the proceedings in the state court being incorporated therein, and upon the pleadings he asks for judgment.

The state district court for Atchison county had jurisdiction of the cause. One trial was had in that court; a new trial granted, not for error, but as of right, under a statute giving a second trial