

adjudged that the mortgages constituted no lien or encumbrance against the United States, and that all the real estate be forfeited. From this judgment the claimants appealed to the circuit court. In the circuit court, held by Mr. Justice Harlan and Judge Bunn, the judgment was reversed, and a certificate, signed by Mr. Justice Harlan only, was entered of record, stating that they were divided in opinion upon the question whether the United States was entitled to judgment forfeiting the property, except subject to the interests of the claimants. From the judgment of the circuit court the district attorney appealed to the supreme court, where it was *held*, *Gray, J.*, under the Revised Statutes, § 614, upon the hearing in the circuit court of an appeal from a judgment of the district court, the district judge who rendered the decision appealed from, although he may, for the information of the court assign his reasons for that decision, is prohibited from voting or taking part in the judgment of the circuit court, and that judgment is to be entered according to the opinion of the judge who is not so disqualified; and further, that neither the consent of parties nor the allowance of an appeal in the court appealed from, can enable the supreme court to review a judgment in any other form of procedure than that prescribed by law, and an appeal does not lie in such actions.

The cases cited in opinion were: *United States v. Lancaster*, 5 Wheat. 434; *Nelson v. Carland*, 1 How. 265; *Bevins v. Ramsey*, 11 How. 185; *Jones v. La Vallette*, 5 Wall. 579; *Clifton v. United States*, 4 How. 242; *Kelsey v. Forsyth*, 21 How. 85; *Callan v. May*, 2 Black, 541.

Promissory Notes—Presentment and Demand.

BRITTON v. NICCOLLS. This case, decided in the October term, 1881, was brought up to the supreme court on error to the circuit court of the United States for the southern district of Mississippi. The plaintiff in the court below, a citizen of Illinois, brought suit to recover damages from the surviving partner of a firm for its neglect to present for payment to the maker two promissory notes sent to it, a banking firm engaged in business at Natchez, in the state of Mississippi, for collection, by reason of which the liability of a responsible indorser was released. Mr. Justice *Field* delivered the opinion of the court: (1) The locality at which a promissory note is dated presumed in law to be the place of the maker's residence. (2) If the maker of a promissory note has neither place of business nor residence in the place where dated, and is absent from it at the maturity of the note, the indorser is charged without actual demand upon the maker, if the holder has the note at such place at maturity, and is ignorant of the actual residence of the maker. (3) By the law of Mississippi, a notary is the agent of the holder of the note placed in his hands for presentment, and not the agent of the bank to which the note is sent for collection, and by whom he is employed. (4) *Semble* that it is not the duty of a notary to make presentment of a promissory note to the maker outside of the place of date of such note, even if he, the notary, knows the actual residence of such maker. (5) An agent for collection of a note dated at a particular place is discharged by placing such note in the hands of a notary for presentment there, provided he, the agent for collection, is ignorant of the actual residence of the maker.

James Lowndes, for plaintiff in error.

James R. Chalmers, for defendant in error.

The cases cited in the opinion were: *Allen v. Merchants' Bank*, 15 Wend. 481; *S. C.* reversed, 22 Wend. 215; *Dorchester & Milton Bank v. New England Bank*, 1 Cush. 177; *Warren Bank v. Suffolk Bank*, 10 Cush. 582; *Bowling v. Arthur*, 34 Miss. 52; *Tiernan Commercial Bank of Natchez*, 7 How. (Miss.) 648; *Commercial Bank of Manchester v. Agricultural Bank*, 7 Smedes & M. 592.

Life Insurance—Forfeiture of Policy.

THOMPSON v. KNICKERBOCKER LIFE INS. CO. This case was brought up on error to the circuit court for the southern district of Alabama, and decision was rendered in March, 1882, by *Bradley, J.*, to the effect that payment of the annual premium is not a condition precedent to the continuance of a policy of life insurance. It is always open for the insured to show a waiver of the condition, or a course of conduct on the part of the insurer, which gave him just and reasonable ground to infer that a forfeiture would not be exacted. But it was *held*, in this case, that the grounds set up by the insured were not just and reasonable, and on which he had any right to rely, viz.: the mere taking of a premium note; sickness and inability of the insured when the note fell due; ignorance by the plaintiff of the outstanding note; want of notice by the insurer, according to its usage, when the premium fell due; a parol contemporary promise by the insurer that the policy should not be forfeited by reason of such non-payment; the usage and custom of the insurer to give grace in the matter of the payment of premiums.

J. Hubley Ashton, for plaintiff in error.

Thos. H. Herndon, for defendant in error.

The cases cited in the opinion were to the point that sickness or incapacity for business is no ground for avoiding the forfeiture of a life policy, (*Klein v. New York Life Ins. Co.* ———;) that time of payment of premium is a material part of the contract, (*New York Life Ins. Co. v. Statham*, 93 U. S. 24.) *Notice U. S. v. Eggleston*, 96 U. S. 572.

Redemption from Mortgage Sale.

BURLEY, Assignee, v. FLINT, Executor. This case was decided at the October term, 1881, of the supreme court of the United States, where it was taken on appeal from the circuit court for the northern district of Illinois, *Miller, J.* If a party designs to avail himself of the right of redemption purely statutory, he should bring himself within the terms of the statute. His offer to redeem must be made within the time prescribed by the statute.

F. H. Kales and C. A. Busby, for appellant.

McCagg & Culver, for appellee.

The cases cited in opinion were: *Suitterlin v. Conn. Mut. Ins. Co.* 90 Ill. 483; *Brine v. Ins. Co.* 96 U. S. 627.