NOTES OF CURRENT DECISIONS OF THE UNITED STATES SUPREME COURT.

Corporations—Unauthorized Issue of Stock.

SCOVILLE *v.* THAYER. A case in error to the circuit court of the United States for the district of Massachusetts was decided in the supreme court of the United States on March 13, 1882, by *Woods,* J.,—Mr. Justice *Field* and Mr. Justice *Gray* dissenting,—to the following effect: When the amount of the capital stock of an incorporated company is limited by its charter, all stock issued in excess of the limit is unauthorized and void. A holder of such unauthorized stock is not entitled to any of the rights, or subject to any of the liabilities, of a holder of authorized stock. Holders of such unauthorized stock are not estopped to set up its invalidity as a defence to an action in the interests of creditors brought against them, to recover the balance unpaid thereon, by the fact that they attended the meeting at which it was voted to issue the same, or that they received and held certificates therefor, or that the officers and agents of the company represented its capital to be equal to the amount of both its authorized and unauthorized stock. When the company which has issued stock beyond the limit prescribed by its charter has been adjudicated bankrupt, the holders of the unauthorized stock are not entitled to have money paid thereon applied as a credit on the unpaid balance due on the unauthorized stock held by them. Subscribers to the stock of an incorporated company paid 20 per cent. on their shares, and it was agreed between them and the company that no further assessments should be made thereon, and certificates for full-paid shares were issued to them. The company was adjudicated bankrupt, and it became necessary to assess the unpaid stock to satisfy claims of creditors of the company.

Held, (1) that the agreement between the company and its stockholders was in equity void as to creditors. (2) That before an action at law could be maintained by the assignees in bankruptcy against a stockholder to recover upon his unpaid subscription of stock, some proceeding in the interest of creditors in a court of competent jurisdiction, to set aside the agreement between the stockholders and the company, and to make an assessment upon such unpaid stock, was necessary. (3) That until such order of the court and assessment, or some authorized demand upon the stockholder to pay the balance due on the stock, no cause of action accrued 190 against him in favor of the assignees, and the limitation prescribed by the second section of the bankrupt act did not begin to run in his favor.

J. E. McKeigham and A. A. Ramsey, for plaintiff.

Sidney Bartlett and Russell & Putnam, for defendant.

The cases cited in the opinion were: As to the power of corporations, express and implied: Fertilizer Co. v. Hyde Park, 97 U. S. 659; Salomons v. Laing, 12 Beav. 339; Eastern Cos. R. Co. v. Hawkes, 5 H. L. Cas. 348. That a corporation has no implied power to change the amount of its capital as prescribed in its charter: Mechanics' Bank v. New York & N. H. R. Co. 13 N. Y. 599; New York & N. H. R. Co. v. Schuyler, 34 N. Y. 30; Railway Co. v. Allerton, 18 Wall. 233; Stace & Worth's Case, Law Rep. 4 Ch. 682. That where the increase of stock is authorized by law a stockholder cannot set up informalities in the issuance of stock: Upton v. Tribilcock, 91 U. S. 45; Chubb v. Upton, 95 U. S. 665; Pullman v. Upton, 96 U. S. 328. As to the distinction between shares which the company had no power to issue and those which they had power to issue: Lathrop v. Kneeland, 46 Barb. 432; Mackley's Case, L. R. 1 Ch. D. 247; Stace & Worth's Case, Id. 4 Ch. 682. That a holder

of claims against an insolvent corporation cannot set them off against his liability to assessment on his stock: Sawyer v. Hoag, 17 Wall. 610; Sanger v. Upton, 91 U. S. 56; Scammon v. Kimball, 92 U. S. 362; Morgan Co. v. Allen, 103 U. S. 498; Wilcox v. Plummer, 4 Pet. 172; Amy v. Dubuque, 98 U. S. 470; Waterhouse v. Jamieson, L. R. 2 H. L. 29; Ex parte Currie, 3 De G., J. & S. 367; Carling's Case, L. R. 1 Ch. Div. 115; New Albany v. Burke, 11 Wall. 96; Burke v. Smith, 16 Wall. 390; Wood v. Dumner, 3 Mason, 308; Mumma v. Potomac Co. 8 Pet. 286; Ogilvie v. Knox Ins. Co. 22 How. 387. That a court of equity, when the company refuses or neglects to make a call for the unpaid subscription to stock: Curry v. Woodward, 53 Ala. 371; Robinson v. Bank of Darien, 18 Ga. 65; Ward v. Griswoldville Manuf'g Co. 16 Conn. 601; and the statute of limitations does not begin to run until order of court or demand; Van Hook v. Whitelock, 3 Paige, 409; Salisbury v. Black, 6 Har. & J. 293; Walter v. Walter, 1 Whart. 292; Quigg v. Kittredge, 18 N. H. 137; Nimms v. Walker, 14 La. Ann. 581. That a suit lies by a billholder of an insolvent bank against a stockholder to enforce his individual liability to pay the bills of the bank: Terry v. Tubman, 92 U. S. 156, distinguished. The statute of limitations begins to run against the bank and its creditors in favor of the stockholder when the bank stops payment: Baker v. Atlas Bank, 9 Met. 182; Com. v. Cochituate Bank, 3 Allen, 42.

Practice—Appeal—Certificate of Division—Forfeiture under Internal Revenue Laws.

UNITED STATES *v.* EMHOLT. An information was filed in the district court for the western district of Wisconsin for the forfeiture of the right, title, and interest of Severin Schulte in certain real estate on which he carried on the business of a distiller without giving bond as required by law, and with intent to deprive the United States of the tax on spirits

distilled by him. Upon the trial in the district court, held by Judge Bunn, Schulte was by special verdict found guilty as charged, and that he held the legal title to the real estate subject to a mortgage to each of two claimants; and it was 191 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.

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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.