

and selectmen, being without authority of law, was as though it never had been. But I am relieved from further difficulty on this question by the construction given to this act by the supreme court of the state, found in the opinion of the court in the case of *Sykes v. Mayor and Aldermen of Columbus*, 55 Miss. 115.

The construction given by the court in that case is that the legislature only intended by this act to ratify and confirm subscriptions made by counties, cities, and towns to the capital stock of this railroad company, authorized by the act of 1870, when not in conflict with the fourteenth section of article 12 of the constitution of the state; and further, that the legislature could not cure and validate by that act a subscription for stock when the subscription would have been invalid under the provisions of the constitution if then made for the first time.

The numerous authorities referred to by Chief Justice SIMRALL, in his able opinion, fully sustain the conclusions reached in that case; and, whether so or not, it is a construction given by the supreme court of the state upon one of its own statutes, and is binding on this court. Applying this construction of this statute to the bonds and coupons in this case, they derive no benefit whatever from this legislation, and consequently have no validity whatever.

I might refer to the numerous authorities cited and relied upon by counsel on both sides, but it would extend this opinion, already too long, without benefit to any one.

The result is that the demurrer to the declaration must be sustained, with leave to plaintiffs to amend, if they are advised so to do.

Plaintiffs declining to amend, judgment final was rendered for defendant.

MADEIRA v. MERCHANTS' EXCHANGE MUT. BEN. SOC.*

(Circuit Court, E. D. Missouri. June 4, 1883.)

INSURANCE—MUTUAL BENEVOLENT SOCIETY—FAILURE TO PAY DUES.

Where a certificate of membership, in the nature of a life policy, issued by a mutual benevolent society, provided that the amount of insurance therein specified should be paid in case of the member's death to his beneficiary, on condition that he had "complied with the by-laws of the society," and the by-laws provided that members should forfeit their membership if they failed to pay

*Reported by B. F. Rex, Esq., of the St. Louis bar.

their dues within 30 days after publication of an assessment, and it appeared from the evidence that the assured had failed to pay an assessment within the time specified, and that it remained unpaid at the time of his death, *held*, that he had forfeited his membership, and that there could be no recovery under his certificate.

This is a suit brought by the widow of Walter C. Madeira to recover insurance upon her husband's life, alleged to be due from the defendant, a corporation organized under the laws of Missouri, of which Mr. Madeira is alleged to have been a member at the time of his death. The by-laws of the association provide that any member who shall fail to pay his dues within 30 days after the publication of a notice of an assessment shall forfeit his membership.

Evidence was introduced at the trial tending to show that notice of an assessment had been published about seven months before Mr. Madeira's death, and that at the time of his death he had not paid the amount assessed against him. His certificate of membership was introduced in evidence and was as follows:

"This is to certify that Walter C. Madeira is a member of the Merchants' Exchange Mutual Benevolent Society of St. Louis; that he is a contributor to the benefit and local funds of said society, and upon the condition that the statements contained in his application for membership are true, and that he has complied with the by-laws of the society, then the sum of one dollar for each member of the society at the time of his death will be paid to his beneficiary, upon satisfactory evidence of death being furnished to the board of trustees."

Robert Harbison and Hannibal Loevy, for plaintiff.

Dyer, Lee & Ellis, for defendant.

TREAT, J. The briefs and authorities have been fully considered, and nothing is found to take this case out of the rulings by the United States supreme court. The forfeiture of the policy was complete before death, and nothing in the nature of a waiver to avoid forfeiture is shown. Stringent as are the rules in ordinary life policies, they should be more rigidly applied in mutual associations. If, under the latter, parties do not meet their obligations, whereby losses may be paid, why should not forfeiture of their interests be upheld?

Finding and judgment for defendant.

MOBILE SAVINGS BANK v. PATTY.

(District Court, N. D. Mississippi, E. D. October Term, 1882.)

1. PROMISSORY NOTES—LAW GOVERNING—LEGISLATIVE ENACTMENTS—HOW CONSTRUED.

Where, by two several acts of the legislature of Alabama,—the one of 1867, the other of 1873,—bills of exchange and promissory notes, payable at a bank or private banking-house, were declared to be governed by the commercial law, and by the other and later enactment bills of exchange and promissory notes, payable at a bank or banking-house, or a *certain place of payment therein designated*, were declared to be so governed; and where both these provisions were brought forward in the Code of 1876 of said state,—the one under section 2100, the other under section 2094 thereof,—*held*, that the insertion of the provision of 1867 in the Code must be considered as an oversight on the part of the codifiers, and that the act of 1873 repealed the act of 1867, so far as there was any conflict between them.

2. SAME—LEGISLATIVE INTENT.

The supreme court of Alabama, in cases like the same above, has decided that, in determining the legislative intent, the dates of the enactment will be looked to, and the one last in time will be held as the law.

At Law.

R. P. Dischon, for plaintiff.

Reves & Reves, for defendant.

HILL, J. The question now presented for decision arises upon plaintiff's demurrer to defendant's second and third pleas. The declaration in substance avers that the note sued upon and described in the declaration was executed and delivered to Bush, Yates & Co., and made payable at the office of the payees in the city of Mobile, Alabama, payable to their order; that before the maturity of the note, Bush, Yates & Co., for value, indorsed and delivered the same to the plaintiffs, who became the *bona fide* holders thereof. The second plea avers that before the defendant had notice of the transfer of the note to plaintiffs, he had paid the amount of said note by shipments of cotton to said Bush, Yates & Co., which they applied to their own use, by which said note was fully paid off and discharged before the commencement of this suit. The question raised by the demurrer is, does this plea present a valid defense to this action? It is admitted that, the note being made payable at Mobile, the rights of the parties must be determined by the laws in force in Alabama at the time the note was given and the rights of the plaintiffs accrued. It is also admitted that the construction given to the statutes of Alabama by the supreme court of that state will be adopted by this court. It is further admitted that, this note being made payable at