necessary in the complaint to allege the fact that the comptroller determined that it was necessary to enforce the liability of the stockholders, and did levy the assessment. (4) That an action at law may be maintained by the receiver to recover the assessments against stockholders. (5) That stockholders are liable to be assessed equally and ratably to the extent of their statutory liability for all debts existing while they hold stock, and before they make a valid transfer of the same. (6) That the various provisions of the national bank act are a part of the contract of the charter of a national bank, and when a party becomes a stockholder therein he necessarily submits himself to the provisions of the law under which the bank is authorized to transact business. (7) That the claim of defendant that he will be deprived of "due process of law" cannot be maintained. These conclusions are sustained by the following authorities: *Kennedy* v. *Gibson*, 8 Wall. 498; *Casey* v. *Galli*, 94 U. S. 673; *Bank* v. *Case*, 99 U. S. 628; *Bailey* v. *Sawyer*, 4 Dill. 463; *Strong* v. *Southworth*, 8 Ben. 331; *Stanton* v. *Wilkeson*, Id. 357; *Welles* v. *Stout*, 38 Fed. Rep. 67; *Richmond* v. *Irons*, 121 U. S. 27, 7 Sup. Ct. Rep. 788. The demurrer is overruled.

D'ORLU *v.* BANKERS' & MERCHANTS' MUT. LIFE ASS'N OF UNITED STATES *et al.*

(Circuit Court, N. D. California. February, 1891.)

INSURANCE—PREMIUM—FORFEITURE—TENDER.

Under Civil Code Cal. § 2611, which provides that an insurance policy may declare that a violation of specified provisions thereof may avoid it, a tender of the premium, together with all other sums due on the policy, will not prevent a forfeiture of the policy for a previous failure to pay the premium when due.

At Law.

Carrol Cook and *J. E. Toulds*, for complainant.

Haggin & Van Ness, for defendants.

HAWLEY, J., (*orally.*) This is an action to recover the sum of $10,000 alleged to be due upon a certificate of membership or policy of life insurance, issued by defendant on January 20, 1886, to one Robert Roy, and made payable upon his death to the plaintiff. This policy, among other things, provides "that all expenses essential to the conduct of the business of the association should be paid from the amounts received as admission fees and annual dues." It is alleged in the complaint that on the 20th day of January, 1889, there was, by the terms of the certificate, the sum of $30 payable to the defendant association, which sum was not paid when due; but that, within a few days from said 20th of January, the said sum was tendered to the defendant association on behalf of complainant, as also were all other sums payable by the terms thereof up to the time of the death of said Robert Roy; but

that each and all of said payments were refused by the defendant upon the ground that said policy of insurance had been forfeited by the non-payment of said sum of $30 on said 20th day of January. The defendant demurs to this complaint upon the ground that upon the facts stated therein it affirmatively appears that plaintiff is not entitled to the relief prayed for. Did the non-payment of the premium due on the 20th of January, 1889, operate as a forfeiture of the certificate of membership? The authorities bearing upon this subject, both state and national, are uniform, and substantially to the effect that the time of payment of the premium, as provided in the policy, is of the essence of the contract of insurance; and that the non-payment of the premium at the time designated in the policy or certificate involves a forfeiture in all cases wherein it is so provided by the express terms of the contract. *Insurance Co.* v. *Statham*, 93 U. S. 24; *Klein* v. *Insurance Co.*, 104 U. S. 88; *Thompson* v. *Insurance Co.*, Id. 252; *Insurance Co.* v. *Pruett*, 74 Ala. 487; *Robertson* v. *Insurance Co.*, 88 N. Y. 541; *Gaterman* v. *Insurance Co.*, 1 Mo. App. 300. Plaintiff's counsel admit that in the absence of any statutory provisions the case would fall within the general rule. But it is claimed that, notwithstanding the express terms of the certificate or policy of insurance, no forfeiture occurred, for the reason that it is alleged that a tender of all sums due was made within a reasonable time after the premium became due. This contention is sought to be maintained upon the theory that section 2076 of the Code of Civil Procedure and sections 3275, 3281, and 3302 of the Civil Code of this state apply to this case, and take it out of the general rule. These sections relate to general provisions upon the subjects named, and are intended to cover all cases of the character therein referred to not otherwise especially provided for. Section 2611 of the Civil Code, relating to the subject of insurance, expressly provides that "a policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy." It is therefore apparent that the general provisions relied upon by plaintiffs have no application to this case. Plaintiff also claims that the "Act to regulate the forfeiture of policies of life insurance," approved February 2, 1872, prohibits the forfeiture of insurance policies for non-payment of premiums. This act, however, was expressly repealed by the provisions of "An act to amend the Civil Code, and to repeal certain acts relative to insurance," approved April 1, 1878, (amendment to Codes 1877–78, p. 82.) To construe this policy as if the forfeiting clause was not contained in it would be to make a new and substantially different contract for the parties, which the courts are not at liberty to do. There are no facts alleged in the complaint, and no statute of this state to which my attention has been called, that brings this case within any of the exceptions to the general rule. The demurrer to the complaint must be sustained. It is so ordered.

BANK OF BRITISH NORTH AMERICA *v.* BARLING *et al.*

(*Circuit Court, N. D. California.* February, 1891.)

BILL OF EXCHANGE—JURISDICTION OF FEDERAL COURT.

A bill of exchange drawn by a corporation in favor of itself, and by it indorsed in blank, is payable to bearer, within the meaning of the statute restricting the jurisdiction of circuit courts in actions on negotiable instruments.

At Law.

C. P. Pomeroy, for plaintiff.

J. T. Goodfellow, for defendant Eva.

HAWLEY, J., (*orally.*) This is an action to recover from the defendants, as stockholders in the Alaska Improvement Company, (a California corporation,) the proportionate part of three certain inland bills of exchange drawn by said corporation, and is based upon the provisions of section 322 of the Civil Code of California, which provides that "each stockholder of a corporation is individually and personally liable for such portions of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation." The bills were drawn by the corporation, and were made payable to its own order, on the firm of William T. Coleman & Co., and prior to their delivery were indorsed in blank by said corporation. After delivery, and before maturity, W. T. Coleman & Co., at the city of Vancouver, British Columbia, transferred and delivered them to the plaintiff, a foreign corporation. The bills, not having been paid at maturity, were protested, and notice given to the Alaska Improvement Company. This action was thereupon instituted against defendants. The defendants demur to the complaint upon the ground that this court has no jurisdiction of the person of the defendants or the subject of the action, in this:

"That the plaintiff sues as an assignee of a chose in action, to-wit, bills of exchange, which were drawn by a domestic corporation in favor of itself on William T. Coleman & Co., who were citizens and residents of the state of California; the drawer, drawee, and payee of each of said bills of exchange being citizens and residents of the state of California."

The statute relative to the jurisdiction of the circuit court, in actions of this character, reads as follows:

"Nor shall any circuit or district court have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer, and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents, if no assignment or transfer had been made."

If this action is to be considered as an action by an assignee to recover the contents of a chose in action, then the first question to be determined is whether the bills of exchange are choses in action, payable