335, 18 S. W. 691; Nolan County v. State, 83 Tex. 182–195, 17 S. W. 823. We quote from Citizens' Bank v. City of Terrell, 78 Tex. 456, 14 S. W. 1003, as follows:

"While our constitution authorizes the creation of a debt and the issuance of its negotiable bonds by the defendant city to provide for constructing waterworks, its mandate is imperative that no such debt shall be created without making provision at the time of its creation to assess and collect annually a sufficient sum to pay the interest thereon, and create a sinking fund of at least two per cent. on the principal. Until that is done the debt is not created, and none exists. If not forbidden by another provision of the constitution, the levy may provide for the collection of a greater sum than the interest contracted for and two per cent. additional, but it cannot be less than that. The language is plain and unambiguous, and in relation to cities the command is twice given. The provision must be sufficient when made. If, subsequently, it becomes either more or less than sufficient, the validity of the obligation would not be affected. By another provision of the constitution the percentage on the assessed value that may be levied is limited. The constitution, in effect, commands that a city with less than 10,000 inhabitants shall, in order to create a debt, take its latest assessment of property for taxes, and from that ascertain how much money a tax of 25 cents on $100 of valuation will produce, and it may create a debt that that amount will provide for the payment of the interest on, and 2 per cent. per annum additional. The rule applies with all its force to cities having more than 10,000 inhabitants, except that the limit of the percentage of taxation is greater."

The coupons sued on in the case in hand being void for want of power in the city of Terrell to create a debt represented by such coupons, the plaintiff in error was rightly defeated in the trial court, and it is not necessary to discuss whether the city of Terrell had a right to pledge either its general revenue or its occupation taxes to pay the same; but, even as to that, the adjudged cases are against the plaintiff in error. See Citizens' Bank v. City of Terrell, 78 Tex. 460, 14 S. W. 1003, where it is said:

"The city had no authority to pledge or appropriate any part of the current revenues for the payment of the principal or interest of the debt. That fund is devoted by the constitution to the support of the city government, and is always under the control of the council for that purpose. The net proceeds from the waterworks, if there had been such, would have likewise been under the control of the council, and was not a basis for the creation of debt."

Also, see Texas Water & Gas Co. v. City of Cleburne, 1 Tex. Civ. App. 587, 21 S. W. 393. And, if we were without authority on the subject, we are inclined, on principle, to the opinion that it is against public policy to permit the necessary alimony of any city, however small such city may be, to be bargained away beyond the year for which it is assessed and is applicable. The judgment of the circuit court is affirmed.

WHITING v. EQUITABLE LIFE ASSUR. SOC.

(Circuit Court of Appeals, Fifth Circuit. November 28, 1893.)

No. 145.

1. WRIT OF ERROR—PROCEEDINGS—AMENDING BILL OF EXCEPTIONS.
It is within the authority of the trial court, during the term, to allow an amendment to the record showing that a paper excluded from evidence was afterwards offered again and admitted; and at the hearing above, on writ of error, the bill of exceptions may be amended to show that such action was taken.

2. INSURANCE—ACTION TO RECOVER PREMIUM—EVIDENCE—SUFFICIENCY.
An administrator sued a life insurance company to recover the premium alleged to have been paid by his intestate upon an application for insurance, which was not granted by the company; and he put in evidence the latter's receipt for such premium, which provided for repayment if the application was denied. The testimony of defendant's agent, who conducted the transaction, showed that the intestate had given a sight draft for the premium, but had paid no cash; that the draft was protested, and had never since been paid; and that it was partly on this ground that the application had been refused. There was no conflicting evidence sufficient to raise a doubt. *Held*, that it was proper to direct a verdict for defendant.

In Error to the Circuit Court of the United States for the Northern District of Florida.

This was an action by J. T. Whiting, administrator of H. C. F. Brown, against the Equitable Life Assurance Society. There was a judgment for defendant on a verdict directed by the court, and plaintiff brings error.

This was an action brought by the complainant in error, J. T. Whiting, as administrator of the estate of H. C. F. Brown, in assumpsit against the Equitable Life Assurance Society, a corporation of New York, in the circuit court for Escambia county, state of Florida, whence it was removed to the circuit court of the United States for the northern district of that state. It was alleged that plaintiff's intestate, on the 28th day of June, 1873, made application to the defendant company for a policy of insurance upon his life for the sum of $30,000, and paid therefor the first premium of $817.51. The policy was not granted, but the party died the 16th of July that year. In 1892 an administrator was appointed, and suit was commenced by him to recover, first, the amount of premium paid with interest; second, $30,000 and interest for life insurance on the life of the plaintiff's intestate. This last claim was abandoned by plaintiff at the trial, and the only demand was for the premium alleged to have been paid, with interest. Upon the trial, the plaintiff proved the death of the intestate, the granting of the administration to the plaintiff, and that the widow of the intestate came into possession of her husband's papers, among which she found a receipt as follows, to wit:

"Age 36. No. ——.

"The Equitable Life Assurance Society of the United States, New York.

"Amount, $30,000.00. Premium, $817.50.

"William C. Alexander, President; Henry B. Hyde, Vice President.

"Received from Mr. H. C. F. Brown eight hundred and seventeen dollars and fifty cents, being for the first annual premium and policy fee on an assurance of thirty thousand dollars on the life of the said H. C. F. Brown, for which an application is this day made by him to the Equitable Life Assurance Society of the United States. The said H. C. F. Brown to be assured from the date of this receipt, in accordance with the rate of premiums and the provisions of the policy of said society: provided always said application shall be approved and accepted by said society; but should the said applica-