It is therefore ordered, that the judgment be reversed, and the cause remanded for another trial to be had therein.

Order.

This cause came on to be heard on the transcript of the record from the Supreme Court of the territory of Iowa, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court; that the judgment of the said Supreme Court in this cause be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded for further proceedings to be had therein in conformity to the opinion of this court.

MOSES WANZER, PLAINTIFF IN ERROR, *v.* TULLIUS C. TUPPER AND JOHN H. ROLLINS, UNDER THE FIRM OF TUPPER & ROLLINS.

By the statutes of Mississippi, the holder of an inland bill of exchange is entitled to recover of an indorser the amount due on the bill, with interest, upon giving the customary proof of default and notice. A protest is necessary only for the purpose of enabling him to recover the five per cent. damages given by the act.
The case of *Bailey* v. *Dozier* (6 How., 23) confirmed.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the Southern District of Mississippi.

It was an action brought by Wanzer upon a bill of exchange drawn by him upon Silverbury & Co., accepted by drawees, and indorsed by Tupper & Rollins to Wanzer.

The cause was tried in the Circuit Court in November, 1846, when the court refused to permit the bill, although admitted to be an inland bill of exchange, to be given in evidence to the jury, because there was no valid protest thereof.

It is unnecessary to state any further facts in the case.

It was argued in this court by *Mr. Coxe*, for the plaintiff in error, no counsel appearing for the defendants.

Mr. Chief Justice TANEY delivered the opinion of the court.

*235] In this case, the Circuit Court for the Southern District of *Mississippi decided, that the holder of an

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inland bill of exchange drawn and accepted in that state was not entitled to recover against the indorser, unless the bill had been regularly protested for non-payment. This decision was made before the case of *Bailey* v. *Dozier*, reported in 6 How., 23, came before this court. In that case the court held, upon full consideration of the question, that, under the statute of Mississippi, the holder of an inland bill of exchange was entitled to recover of an indorser the amount due on the bill, with interest, upon giving the customary proof of default and notice; and that the protest was necessary only for the purpose of enabling him to recover the five per cent. damages given by the act. The case of *Bailey* v. *Dozier* must govern this, and the judgment in the Circuit Court is therefore reversed.

Order.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded to the said Circuit Court, with directions to award a *venire facias de novo*.

ELI CLARK, WILLIAM GREEN, AND HUGH MCGILL, PLAINTIFFS IN ERROR, *v.* THE PRESIDENT, DIRECTORS, AND COMPANY OF THE MANUFACTURERS' INSURANCE COMPANY, DEFENDANTS.

Where an action was brought upon a policy of insurance against fire, by the assignees of the person originally insured, and in the policy it was said that it was "made and accepted upon the representation of the said assured, contained in his application therefor, to which reference is to be had," it was proper to prove by parol testimony that the representations alleged to have been made by the party originally insured were actually made by him.

And if the assignees, by their acts, adopted these representations, when renewing the policy from time to time, the evidence was equally admissible, because the subsequent policies had reference to the one first made.[1]

[1] An agreement to renew a policy of fire insurance, in the absence of evidence that any change was intended, implies that the terms of the existing policy are to be continued. *Hay* v. *Star Fire Ins. Co.*, 77 N. Y., 235, 239.

To constitute an application a part of a policy of fire insurance, there