

is the right to hear and determine; not to determine without hearing. And where, as in that case, no appearance was allowed, there could be no hearing or opportunity of being heard, and, therefore, could be no exercise of jurisdiction. By the act of the court, the respondent was excluded from its jurisdiction.

Judgment affirmed.

MR. JUSTICE MILLER, MR. JUSTICE BRADLEY, and MR. JUSTICE HUNT dissented.

NOTE. — *Gregory v. McVeigh*, also in error to the Corporation Court of the city of Alexandria, Va., was argued at the same time and by the same counsel as was the preceding case.

MR. JUSTICE FIELD delivered the opinion of the court.

This case is similar to that of *Windsor v. McVeigh*, and, upon the authority of the decision in that case, the judgment below is affirmed.

MR. JUSTICE MILLER, MR. JUSTICE BRADLEY, and MR. JUSTICE HUNT, dissented.

BIGELOW v. BERKSHIRE LIFE INSURANCE COMPANY.

In an action against it upon a policy of life insurance, which provided that it should be null and void if the insured died by suicide, "sane or insane," the company pleaded that he "died from the effects of a pistol-wound inflicted upon his person by his own hand, and that he intended, by inflicting such wound, to destroy his own life." *Held*, that a replication setting up that, "at the time when he inflicted said wound, he was of unsound mind, and wholly unconscious of his act," is bad.

ERROR to the Circuit Court of the United States for the Northern District of Illinois.

This is an action on two policies issued by the defendant on the life of Henry W. Bigelow. Each contained a condition in avoidance, if the insured should die by suicide, *sane or insane*; and in such case the company agreed to pay to the party in interest the surrender value of the policy at the time of the death of Bigelow. The defendant pleaded that Bigelow died from the effects of a pistol-wound inflicted upon his person by his own hand, and that he intended by this means to destroy his life. To this the plaintiffs replied, that Bigelow, at the