

broken the contract. The case finds that the defendant did not waive his right to rescind, if upon the facts he could rescind.

A party to a contract is not bound to accept anything less than a full performance, according to its terms and conditions. The wood forwarded up to the time of the attempted rescission was not in compliance with the contract, and the defendant refused to accept it as such, and notified the plaintiff that he rescinded the contract. This he had a right to do. The wood delivered not being such as the contract called for, the defendant was not bound to receive it. The plaintiff's letter, insisting on an acceptance of the wood and a variation from the original contract, presented the alternative to the defendant, either to accept the wood at a reduced price, or sort it to conform to the contract, charging the expense to the plaintiff. The defendant was under no obligation to do either. If all the wood contracted for had been delivered at once containing the wood delivered up to the time the notice of the rescission was given, the defendant would not have been compelled to accept it, because it was not of the quality stipulated for.

Judgment for the defendant.

ALLEN, J., did not sit: the others concurred.

SANBORN v. SANBORN & a., Ex'rs.

A promissory note made by a father, in view of the near approach of death, to his son, and placed in the hands of a third person with directions to keep it in his possession until six months after the death of the maker, and then deliver it to the payee, is not good either as a gift *causa mortis* or as a bequest.

ASSUMPSIT, upon a note for \$500. Facts agreed. Heman Sanborn, while on his death-bed, and expecting to die within a short time, and only a few hours before his death, made the note in suit, payable to the plaintiff, his son, on demand, after his decease, and placed it in the hands of one Robinson, with instructions to keep it until six months after Heman's death, or until his executors had got together sufficient funds to pay it without inconvenience and trouble, and then to deliver it to the payee. The plaintiff was not present when the note was made, nor did he know of it until after Heman's death. Heman told Robinson that he designed the note in place of a codicil to his will; that he had left Abraham but one dollar in his will, and wanted to give him this \$500 in addition. The note was designed as a gift to Abraham, and there was no other consideration for it.

D. B. Donovan, for the plaintiff.

Chase & Streeter, for the defendants.

CLARK, J. The note was an executory promise made upon no sufficient legal consideration, and no action can be maintained upon it. It is invalid as a gift *causa mortis*. The donor's own promissory note, payable to the donee, cannot be the subject of a *donatio causa mortis*. *Copp v. Sawyer*, 6 N. H. 386; *Flint v. Pattee*, 33 N. H. 520; *Parish v. Stone*, 14 Pick. 198. It cannot operate as a bequest because it was not executed in conformity with the requirements of the statute of wills. *Bartlett v. Remington*, 59 N. H. 364; *Towle v. Wood*, 60 N. H. 434; *Morey v. Solier*, 63 N. H. 507, 513.

Judgment for the defendants.

CARPENTER, J., did not sit: the others concurred.

LANG v. GAGE.

The defendant signed a note as surety, and the principals gave him a mortgage to secure his liability. Afterwards he assigned the mortgage to a savings bank, of which he was an officer, to be held as security for this and other similar notes mentioned in it. The bank foreclosed and sold the property, and from time to time the defendant, as an officer of the bank, paid various sums on the note from the proceeds, some of the payments being made within six years before the commencement of the suit. *Held*, that payments so made were not evidence from which the jury could find a new promise by the defendant.

ASSUMPSIT, on the promissory note of C. and J. C. Gage and the defendant for \$2,000, dated December 25, 1874, and payable to the plaintiff on demand. Writ dated September 14, 1888. Plea, the statute of limitations; replication, a new promise.

On the note are the following endorsements: Oct. 12, 1875, one year's interest; Jan. 3, 1877, one year's interest; Dec. 21, 1877, one year's interest; Dec. 23, 1878, one year's interest. "Oct. 5, 1881, received of Penacook Savings Bank \$150. Jan. 20, 1882, received of Penacook Savings Bank \$150. Jan. 9, 1883, received on the within note \$100. Nov. 28, 1883, received of Penacook Savings Bank \$125. Dec. 2, 1884, received of S. F. Brown, assignee, \$70. Dec. 2, 1885, received of assignee of Penacook Savings Bank \$1,000, paid in accordance with the report of the commissioner."

All the endorsements after 1878 (except that of Nov. 28, 1883).