

SWATARA R. CO. v. MCKIM.

[2 West. Law J. 138; 11 Hunt, Mer. Mag. 363.]

Circuit Court, D. Maryland.

Oct., 1844.

CORPORATIONS—SUBSCRIPTION FOR
STOCK—FRAUDULENT AGREEMENT.

This suit was brought by the Swatara Railroad Company of Maryland, to recover of the executors of John McKim, Jr., deceased, the sum of \$500, the amount subscribed for ten shares of stock. On the part of the defendant, It was proved that the plaintiff's commissioner to receive subscriptions, had agreed with certain other stockholders who had previously subscribed their names on the list, to receive, in payment of their shares, Tide Water Canal stock at its nominal amount, when in fact it was greatly depreciated in the market; this agreement, it was contended, was a fraud upon the other bona fide stockholders, and entitled them to a rescission of their subscription.

THE COURT (TANEY, Circuit Justice,) decided that each stockholder must be charged with notice of the company's charter, which authorized only payments of stock in money, and, therefore, as the said agreement to receive depreciated securities was illegal and void, it was incompetent to the parties to the illegal agreement, to set it up in bar of an action brought against them for the stock subscribed; and if the said parties would be precluded from setting up said agreement, neither could any other bona fide subscriber of stock rely upon the said illegal agreement for the purpose of annulling his own subscription. It is proper to state that the articles of subscription, signed by all the stockholders, purported, on their face, to be payable in dollars, but THE COURT decided that whether the collateral agreement to pay in depreciated

securities, was in writing or by parol, it was equally inadmissible as a defence.

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