

POTTS, ASSIGNEE, ETC., V. WALLACE.

Circuit Court, E. D. New York.

October 3, 1887.

CORPORATIONS—SUBSCRIPTION—TENDER OF FULL
AMOUNT—REFUSAL—FAILURE OF CORPORATION—SUBSEQUENT LIABILITY
OF SUBSCRIBER.

A tender, during the solvency of a corporation, by a subscriber to its stock, of the full amount of his subscription, and demand for issue of certificate, which tender is, without legal cause, declined, and the issue of certificate refused, extinguishes the obligation to pay the subscription, as against the assignee of the corporation, when it has become insolvent.

On Motion for New Trial.

Sidney Ward, for plaintiff.

Tracy, Catlin & Hudson, for defendant.

BENEDICT, J. At the trial of this cause a verdict for the plaintiff was directed, under the impression that recent decisions of the supreme court of the United States compelled such a determination. A more careful examination of those decisions, in the light of the argument addressed to me on the motion for a new trial, has shown that none of the decisions of the supreme court upon which the plaintiff relies has gone so far as to hold that a subscriber to the stock of a corporation is liable to the assignee of the corporation after the insolvency of the corporation for the amount of his subscription, when he shows, as in this case, that during the solvency of the corporation he duly and in good faith tendered the corporation the full amount of his subscription, and demanded a certificate of stock to the amount; and that the corporation, being still solvent, without legal cause refused to receive the subscription, and issue the certificate.

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Upon such a state of facts, in my opinion it should be held that the obligation to pay the subscription had been extinguished, and I find no case that compels a different decision. As the verdict was directed upon this point alone, the result is that the verdict must be set aside, and a new trial had.