

UNITED STATES v. KORNMEHL.

(District Court, D. New Jersey. August 4, 1898.)

ALIENS—FRAUDULENT NATURALIZATION—CANCELLATION OF PAPERS.

Naturalization papers will be canceled as improvidently issued where it is made to appear to the court that the affidavit and the testimony on which the papers were issued were false, and that the applicant was not in fact eligible to citizenship.

Rule to show cause why naturalization papers should not be set aside and canceled.

J. Kearney Rice, U. S. Atty., and Dr. Lozenzo Ullo, for the immigration bureau, port of New York.

Robert Carey, for defendant.

KIRKPATRICK, District Judge. Marcus G. Kornmehl, on the 21st day of June, 1898, applied to this court for naturalization, and claimed the right to become a citizen of the United States at that time, upon the ground that he had come to the United States when he was under the age of 18 years, and that he had continued to reside therein ever since. The applicant made affidavit to the necessary averments, and the same were also sworn to by a witness produced by him for the purpose. Almost immediately after the certificate of naturalization had been granted, counsel on behalf of the immigration commissioners appeared before the court, and obtained a rule to show cause why they should not be revoked, as having been improvidently issued. The matter was referred to a United States commissioner to take testimony, and, upon his report being made to the court, it appears that on the 3d day of June last, in legal proceedings had in the circuit court of the United States for the Second circuit, the said Marcus G. Kornmehl had sworn, with much corroborative detail of circumstance, that at the time of his arrival in the United States he was of the age of 24 years. This allegation, made under the solemnity of an oath, naturally excites a doubt as to the truth of the applicant's statement made in this court, which doubt the testimony of the witnesses produced by him before the commissioner fails to dispel. When I consider the consistency of the details of his account of himself as given in the courts of New York, and the inconsistencies contained in that which he gives in this court of the interest moving him at each time to speak the truth; when I take into account the improbabilities of the stories told by the witnesses whom the applicant called before the commissioner, and their frequent contradictions of the applicant and of themselves,—I am forced to the conclusion that the fact is not, as stated to this court, that at the time of his arrival in the United States the applicant was under the age of 18 years.

The court was deceived, and the letters of naturalization were improvidently issued. They are still within the control of the court, and an order should be entered revoking them, and directing that they be returned to the clerk of the court for cancellation.

WALLACE v. HOOD.

(Circuit Court, D. Kansas, First Division. August 18, 1898.)

1. **NATIONAL BANK—EFFECT OF PURCHASE AND RESALE OF ITS OWN STOCK.**
The statutory inhibition against the purchase by a national bank of its own stock does not render stock so purchased void; and where, in such case, the stock is held for the bank by a nominal owner, a subsequent purchaser for value received by the bank acquires a good title, which cannot be questioned by the bank or its creditors.
2. **SAME—LIABILITY OF STOCKHOLDERS—RESCISSION OF PURCHASE OF STOCK AFTER INSOLVENCY.**
Though a person may have been induced by fraudulent representations to purchase stock of a national bank, the contract is voidable only at his option; and, where he has not discovered the fraud nor made his election at the time the bank passes into the hands of a receiver, he is apparently a stockholder, and can only escape liability as such by affirmatively alleging and proving the fraud, acts of diligence which negative any charge of negligence, and that no debt was created nor credit given the bank after he became such stockholder.
3. **SAME—ACTION TO ENFORCE ASSESSMENT—DEFENSES.**
A stockholder, by purchase in a national bank which has conducted business as such for six years, cannot defend against an assessment, on its insolvency, on the ground that the original capital stock was never paid in.
4. **SAME—RESCISSION OF PURCHASE OF STOCK—TENDER.**
One induced to purchase stock of a national bank by fraudulent representations of the bank, which was in fact the owner of the stock and received the price, cannot make an effectual tender of rescission which will support an action at law to recover the purchase price after the appointment of a receiver for the bank, as neither the bank nor the receiver then has authority to rescind and make restitution of the purchase money.
5. **SAME—COUNTERCLAIM AGAINST RECEIVER.**
In an action by the receiver of a national bank to enforce an assessment against a stockholder, the latter cannot maintain a cross petition in the nature of a counterclaim to recover the purchase price of his stock on the ground of the alleged fraud of the bank inducing its purchase by defendant. The proper proceeding in such case is by an independent bill in equity against both the receiver and the bank for a rescission, making tender of the stock.

This is an action by plaintiff, T. B. Wallace, receiver of the Missouri National Bank, at Kansas City, Mo., to recover of the defendant the sum of \$10,000,—the amount of an assessment made upon him, as a shareholder in said bank, by the comptroller of the currency.

The defendant became the purchaser of said stock in April, 1896. On the 3d day of December, 1896, the bank was taken charge of by the comptroller of the currency, and plaintiff was appointed receiver thereof. On the 30th day of July, 1897, the comptroller of the currency made an assessment equal to the face value of the stock, as prescribed by sections 5151 and 5234 of the Revised Statutes, for the benefit of creditors of said bank. Due notice of this assessment was given to the defendant, and payment thereof was requested to be made on or before the 30th day of August, 1897. The defendant failing to comply therewith, this suit was instituted October 30, 1897. The defendant appeared, and has filed several amended and supplemental answers. His final substituted answer pleads in defense that he was deceived into the purchase of said stock by the false and fraudulent representations made to him by the president of the bank as to its financial condition and business. These misrepresentations are set out in great detail