

had been signed to the petition; and it is fair to infer that he knew what Glickauf had done, and that his objection was not to the construction of the road, but to the wheels being placed under the surface of the street in front of his building. It is doing the complainant no injustice to say that, if he did not actually authorize his agent to sign his name to the petition, he knew it had been so signed, long before this suit was brought, and by his silence acquiesced in it. It is significant in this connection that, while Glickauf swears he signed the complainant's name to the petition without authority, he does not swear that he never informed the complainant what he had done.

The evidence does not fairly justify the charge in the bill that the excavations which have been or will be made for the wheels in front of the complainant's building will weaken the foundations, and thereby impair the value of his property.

The motion for a preliminary injunction is denied.

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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.

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.

WALL v. EQUITABLE LIFE ASSUR. SOC.

(Circuit Court, W. D. Missouri, W. D. 1887.)

1. LIFE INSURANCE—POLICY ISSUED IN NEW YORK—DELIVERY IN MISSOURI.

A policy of insurance issued by a New York company to a citizen of Missouri, upon an application made in Missouri, and forwarded to the company in New York, where it is accepted, the policy drawn and signed, and returned to Missouri to be delivered to the insured, by the terms of which policy the premiums are to be paid to the company in New York, and the sum insured, when due, to be payable at the office in New York, is subject to the Missouri statutes governing policies of life insurance delivered in that state.

2. SAME—TEMPORARY INSURANCE—PAYMENT OF TWO PREMIUMS—FORFEITURE.

Rev. St. Mo. § 5988, provides that no policy of insurance on life hereafter issued by a company authorized to do business in this state shall, after payment of two full annual premiums, be forfeited or become void by reason of non-payment of premiums, and also provides for temporary insurance. Section 5985 provides that, upon death of the insured during the term of temporary insurance, as provided in section 5983, and where no condition of the policy is violated except non-payment of premiums, the company shall be liable for the full amount insured, as if there had been no default in payment. *Held*, that a provision in a policy which required the payment of three full annual premiums before the insured was entitled to temporary insurance is void.

Action upon a life insurance policy issued by defendant upon the life of plaintiff's husband.

Plaintiff alleges in the second count of the amended petition that the defendant is a corporation created and existing under the laws of the state of New York, and is doing business as a life insurance company in the state of Missouri, and is subject to the laws of said state; that the policy sued on was executed on the twenty-third day of December, 1880, by the defendant, and delivered to the insured, who was then and remained a resident of the state of Missouri, by the terms of which policy defendant agreed to pay this plaintiff, within 60 days after proof of death, to be furnished defendant at its office in New York, \$5,000; that the insured paid the annual premiums for the years 1881 and 1882, when due, in addition to the premium paid at the time of issuing the policy, making three full annual payments of premiums; that by virtue of these payments the said policy, on the fifteenth day of December, 1883, had acquired a net value and was worth the sum of \$161.05, computed upon the American table of mortality; that neither the insured nor the plaintiff was indebted to defendant at that time for unpaid premiums, or on any other account; that the insured at that time was 39 years old; that three-fourths of such net value of said policy, applied and taken as a net single premium for temporary insurance for the amount written in the