

an official letter, stating the money will be paid to the Treasurer of said Company when in funds." Smoot says, in his testimony, that the State Treasurer did not regard the affidavit as sufficient, and accordingly we find another affidavit dated the following day, (February 6th, 1873,) executed by Smoot, Fant and Winder in Baltimore city, filed the same day in Annapolis in which they swear, "That fifty per centum has been actually paid in money to the Treasurer of the said Southern Maryland Railroad Company, by other subscribers than the State of Maryland, to the capital stock of the said Southern Maryland Railroad Company on their respective shares, which said fifty per centum amounts to the sum of \$500,000." The same day the Treasurer of the State, as appears from his official letter, writes Smoot, advising him that the papers were all satisfactory, and that the amount of \$160,000 would be paid as soon as the Treasury was in funds. Armed with this letter from the Treasurer, improperly given, as we think, the President of the Company is enabled to borrow the money the following day from James Sloan, Jr., of Baltimore city, making an assignment to Sloan of the State's subscription, in which assignment, it is stated, that the same is made to cover the amount of \$65,000 due the Company, "as evidenced by the letter of the Treasurer of the State of Maryland, dated the 6th day of February, 1873, and addressed to the said Smoot and Fant." On the 3rd day of June, 1873, the Comptroller issued his warrant to James Sloan, Jr., assignee of the Southern Maryland Railroad Company, for the sum of \$65,000, and on the 25th of November, 1873, another warrant for \$16,500 to Alexander Brown & Sons, the assignees of said Company, these two amounts being fifty per centum on the State's subscription.

By what authority of law, or on what proper proof these warrants were issued, the undersigned are unable to say. The law of 1868, chapter 454, expressly provides as follows: "And the said Treasurer shall, out of any unappropriated money in the Treasury, pay the installments on each share of the capital stock of said company or companies, for which he shall subscribe as aforesaid, on the warrant of the Comptroller, which the latter officer is hereby directed to issue, as the said installments may be called for by the County Commissioners of said county, and agreeable to the provisions of the Act incorporating said company or companies," as the Act incorporating the Southern Maryland Railroad Company, (Acts of 1868, chapter 150,) expressly provides in Section 10, "that there shall be paid on every share of such stock, two dollars at the time of subscribing;