1898

Enforcement of the Liability of a Stockholder in a Foreign Corporation

Darwin Curtis Gano
Cornell Law School

Follow this and additional works at: http://scholarship.law.cornell.edu/historical_theses
Part of the Law Commons

Recommended Citation
THESIS.

ENFORCEMENT OF THE LIABILITY OF A STOCKHOLDER IN A FOREIGN CORPORATION.

Presented for the Degree of

Master of Laws

by

Darwin Curtis Gano, LL. B.

CORNELL UNIVERSITY. College of Law.

1898.
TABLE OF CONTENTS.

CHAPTER I. STOCKHOLDER'S LIABILITY AT COMMON LAW. 1

II. INDIVIDUAL LIABILITY IN ADDITION TO THE LIABILITY IMPOSED BY THE COMMON LAW. 3

a. By Contract. 3
b. By Constitution. 3
c. By Statute. 5

1. Penalty. 7

2. Full Faith and Credit. 11

III. CLASSIFICATION OF STATUTES IMPOSING INDIVIDUAL LIABILITY. 17

a. Contractual. 17
b. Penal. 20
c. Statutory. 21

1. Under Kansas Statute. 22
IV. REMEDY.

1. Prescribed by the Statute.

2. Must be exhausted against the corporation.

3. At Law.

4. In Equity.

V. SPECIAL STATUTES OF NEW YORK AND NEW JERSEY.

APPENDIX.
### TABLE OF CASES

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aultman's Appeal</td>
<td>142 Pa.St. 505</td>
</tr>
<tr>
<td>Bank v. Mining Co.</td>
<td>42 Minn. 441</td>
</tr>
<tr>
<td>Bank of Poughkeepsie v. Æbolson</td>
<td>24 Wend. 473</td>
</tr>
<tr>
<td>Barnes v. Wheaton</td>
<td>80 Hun 8</td>
</tr>
<tr>
<td>Bird v. Culver</td>
<td>22 S.Car. 292</td>
</tr>
<tr>
<td>Branch v. Baker</td>
<td>53 Ga. 502</td>
</tr>
<tr>
<td>Burgess v. Seligman</td>
<td>107 U.S. 20</td>
</tr>
<tr>
<td>Camden v. Stuart</td>
<td>144 U.S. 104</td>
</tr>
<tr>
<td>Carver v. Braintree</td>
<td>2 Story (U.S.) 433</td>
</tr>
<tr>
<td>Chase v. Curtis</td>
<td>113 U.S. 452</td>
</tr>
<tr>
<td>Chase v. Lord</td>
<td>77 N.Y. 1</td>
</tr>
<tr>
<td>Chicago etc. Ry. v. Doyle</td>
<td>60 Miss. 977</td>
</tr>
<tr>
<td>Chicago etc. Ry. v. Wiggins</td>
<td>119 U.S. 615</td>
</tr>
<tr>
<td>Coffing v. Dodge</td>
<td>167 Mass. 231</td>
</tr>
<tr>
<td>Coleman v. White</td>
<td>14 Wis. 762</td>
</tr>
<tr>
<td>Compton v. Schwabacher</td>
<td>15 Wash. 306</td>
</tr>
<tr>
<td>Case</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Coykendall v. Miles</td>
<td>14</td>
</tr>
<tr>
<td>Culver v. Third Nat. Bk.</td>
<td>52</td>
</tr>
<tr>
<td>Cushing v. Perot</td>
<td>33</td>
</tr>
<tr>
<td>Dane v. Dane Mfg. Co.</td>
<td>6</td>
</tr>
<tr>
<td>Davidson v. Rankin</td>
<td>6</td>
</tr>
<tr>
<td>Dawson v. Sholley</td>
<td>52</td>
</tr>
<tr>
<td>Dennick v. Railroad Co.</td>
<td>9</td>
</tr>
<tr>
<td>Derrickson v. Smith</td>
<td>21</td>
</tr>
<tr>
<td>Drinkwater v. Portland etc. Co.</td>
<td>45</td>
</tr>
<tr>
<td>East St Louis v. People</td>
<td>5</td>
</tr>
<tr>
<td>Elmendorf v. Taylor</td>
<td>42</td>
</tr>
<tr>
<td>Errickson v. Nesmith</td>
<td>16</td>
</tr>
<tr>
<td>Errickson v. Nesmith</td>
<td>48</td>
</tr>
<tr>
<td>Ex parte Van Riper</td>
<td>44, 49</td>
</tr>
<tr>
<td>Ferguson v. Sherman</td>
<td>34</td>
</tr>
<tr>
<td>First Nat. Bk. v. Mining Co.</td>
<td>42</td>
</tr>
<tr>
<td>Flash v. Conn</td>
<td>13</td>
</tr>
<tr>
<td>Flash v. Conn</td>
<td>13, 15, 43, 51</td>
</tr>
<tr>
<td>Flint v. Pierce</td>
<td>3</td>
</tr>
<tr>
<td>Fourth Nat. Bk. v. Francklyn</td>
<td>45, 54</td>
</tr>
<tr>
<td>Citation</td>
<td>Pages</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Fowler v. Lamson, 146 Ill. 472.</td>
<td>28</td>
</tr>
<tr>
<td>Gauch v. Harrison, 12 Ill. App. 457.</td>
<td>7</td>
</tr>
<tr>
<td>Glenn v. Grath, 147 U. S. 360.</td>
<td>15</td>
</tr>
<tr>
<td>Granella v. Bigelow, (Wis.) 71 N. W. 111.</td>
<td>59</td>
</tr>
<tr>
<td>Gregory v. Railroad, 40 N. J. Eq. 38.</td>
<td>51</td>
</tr>
<tr>
<td>Griffith v. Mangam, 73 N. Y. 611.</td>
<td>59</td>
</tr>
<tr>
<td>Groves v. Slaughter, 15 Peters (U.S.) 449.</td>
<td>5</td>
</tr>
<tr>
<td>Gwin v. Barton, 6 How. (U.S.) 7.</td>
<td>8</td>
</tr>
<tr>
<td>Gwin v. Brudove, 2 How. (U.S.) 29.</td>
<td>8</td>
</tr>
<tr>
<td>Halsey v. McLean, 12 Allen 438.</td>
<td>13, 16</td>
</tr>
<tr>
<td>Handcock Nat. Bk. v. Ellis, 166 Mass. 414.</td>
<td>38, 39</td>
</tr>
<tr>
<td>Handy v. Draper, 89 N. Y. 334.</td>
<td>51, 56</td>
</tr>
<tr>
<td>Harper v. Union Mfg. Co. 100 Ill. 225.</td>
<td>50</td>
</tr>
<tr>
<td>Herrick v. Railroad, 31 Minn. 11.</td>
<td>14</td>
</tr>
<tr>
<td>Higgins v. Railroad, 155 Mass. 176.</td>
<td>14</td>
</tr>
<tr>
<td>Hirshfield v. Bopp, 145 N. Y. 84.</td>
<td>53</td>
</tr>
<tr>
<td>Hoaid v. Wilcox, 47 Pa. St. 51.</td>
<td>57</td>
</tr>
<tr>
<td>Hospes v. Manfg. Co. 48 Minn. 174.</td>
<td>2</td>
</tr>
<tr>
<td>Howell v. Manglesdorf, 33 Kan. 194.</td>
<td>32</td>
</tr>
<tr>
<td>Hull v. Burtis, 90 Ill. 213.</td>
<td>56</td>
</tr>
<tr>
<td>Huntington v. Attrill, 146 U.S. 657.</td>
<td>8, 9, 15, 21</td>
</tr>
<tr>
<td>Case</td>
<td>Volume</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Huntington v. Attrill</td>
<td>1893</td>
</tr>
<tr>
<td>Jerman v. Benton</td>
<td>79 Mo.</td>
</tr>
<tr>
<td>Jessup v. Carnegie</td>
<td>80 N. Y.</td>
</tr>
<tr>
<td>Latimer v. Citizens Nat. Bk.</td>
<td>71 N. W. (Ia.)</td>
</tr>
<tr>
<td>McCarty v. LaVasche</td>
<td>89 Ill.</td>
</tr>
<tr>
<td>McVickery v. Jones (U.S.)</td>
<td>3 Am. &amp; Eng. Corp. Cs. N.S.</td>
</tr>
<tr>
<td>Manufacturing Co. v. Bradley</td>
<td>105 U. S.</td>
</tr>
<tr>
<td>Marion v. Norris</td>
<td>37 Ind.</td>
</tr>
<tr>
<td>Marshall v. Sherman</td>
<td>148 N. Y.</td>
</tr>
<tr>
<td>Mason v. Alexander</td>
<td>44 Oh. St.</td>
</tr>
<tr>
<td>Mason v. Fischer</td>
<td>21 South. (Mass.)</td>
</tr>
<tr>
<td>May v. Black</td>
<td>77 Wis.</td>
</tr>
<tr>
<td>Mills v. Duryea</td>
<td>7 Cranch</td>
</tr>
<tr>
<td>Morgan v. Lewis</td>
<td>46 Oh. St. 1</td>
</tr>
<tr>
<td>Morrow v. Superior Court</td>
<td>64 Cal.</td>
</tr>
</tbody>
</table>

Page dimensions: 567.6x791.0
Nat. Bk. of Oxford v. Whitman, (U.S.) 5 A. & E. Corp. Cs. 273... 33
New Haven etc. Co. v. Linden Springs Co. 148 Mass. 349, 19, 43, 51

O'Reilly v. Bard, 105 Pa. St. 589... 6

Pacific Railroad v. Lewis, 24 Neb. 848... 14
Paine v. Stewart, 33 Conn. 516... 53
Patterson v. Lynde, 112 Ill. 196... 2, 51, 63
Peck v. Cooper, 8 Ill. App. 403... 1
Pollard v. Bailey, 20 Wall. 527... 44, 45, 61
Post v. Toledo etc. Ry. 144 Mass. 341... 37

Railroad Co. v. Railroad Co., 135 Mass. 134... 51
Rice v. M. H. & Co. 56 N. H. 114... 51
Rocky Mt. Nat. Bk. v. Bliss, 89 N. Y. 338... 54
Rule v. Omega Stove Co. (Minn.) 4 A. & E. Corp. Cs. N. S. 300... 17, 54
Russel v. Pacific Ry. Co. 113 Cal. 258... 18, 46

Sanger v. Upton, 91 U. S. 56... 2
Savings Bk. v. O'Brien, 51 Hun 45... 43, 45
Sawyer v. Hoag, 17 Wall. 610... 2
Sayles v. Brown, 40 Fed. Rep. 8... 20
<table>
<thead>
<tr>
<th>Citation</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith v. Life Ins. Co. 14 Allen</td>
<td>16</td>
</tr>
<tr>
<td>Smith v. Wells, 46 N. E. (Ind.) 1000</td>
<td>2</td>
</tr>
<tr>
<td>State Saving Asst. v. Kellogg, 52 Mo. 583</td>
<td>53</td>
</tr>
<tr>
<td>Stokes v. Stickny, 96 N. Y. 323</td>
<td>21</td>
</tr>
<tr>
<td>Terry v. Little, 101 U. S. 216</td>
<td>1, 57, 60</td>
</tr>
<tr>
<td>The Antelope, 10 Wheat. 66</td>
<td>7</td>
</tr>
<tr>
<td>Tuttle v. Nat. Bk. of the Republic, 116 Ill. 497</td>
<td>5, 16, 29</td>
</tr>
<tr>
<td>United Glass Co. v. Vary, 152 N. Y. 123</td>
<td>54</td>
</tr>
<tr>
<td>Willis v. Mahon, 48 Minn. 140</td>
<td>5</td>
</tr>
<tr>
<td>Wing v. Slater, 35 Atl. 302</td>
<td>6</td>
</tr>
<tr>
<td>Wisconsin v. Pelican Ins. Co. 127 U. S. 265</td>
<td>8</td>
</tr>
<tr>
<td>Wyatt v. Moorehead, 4 Oh. N. P. 435</td>
<td>5, 29, 61</td>
</tr>
<tr>
<td>Young v. Farewell, 139 Ill. 326</td>
<td>43, 51</td>
</tr>
</tbody>
</table>

---

**OTHER CITATIONS.**

<table>
<thead>
<tr>
<th>Citation</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook on Corporations. sec. 21</td>
<td>50, 56, 57</td>
</tr>
<tr>
<td>Source</td>
<td>Pages</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Laws of New York, 1897, sec 60 of chap. 384.</td>
<td>66</td>
</tr>
<tr>
<td>Laws of New Jersey, 1897, chap. 50.</td>
<td>68</td>
</tr>
<tr>
<td>New York Constitution, Art. 8.</td>
<td>4</td>
</tr>
<tr>
<td>Thompson's Commentaries of Law of Corporations.</td>
<td>6, 39, 50</td>
</tr>
<tr>
<td>United States Constitution, Art. 4, sec. 1.</td>
<td>11</td>
</tr>
</tbody>
</table>
CHAPTER I.

STOCKHOLDERS LIABILITY AT COMMON LAW.

Under the rule of the Common Law a stockholder of a corporation was not liable for its debts or torts when the subscription on his shares was paid up. "The individual liability of stockholders in a corporation is always a creature of statute. It does not exist at Common Law."


At Common Law the stockholder is liable to creditors for any sum still unpaid upon his stock. The capital of the corporation is the fund which enables it to do business and upon the faith of which it is given credit. The public in dealing with the corporation has the right to assume that the capital stock has all been paid in, or will be, to make the corporate obligations good.
Some of the American courts have gone so far to protect creditors as to declare that the capital stock, including the amounts unpaid on stock, is a "trust fund" for the benefit of creditors. Patterson v. Lynde, 112 Ill. 196; Sawyer v. Hoag 17 Wall. 610; Compton v. Schwabacher, 15 Wash. 306; Sanger v. Upton, 91 U. S. 56; Camden v. Stuart, 144 U. S. 104. But this doctrine is not recognized in some American states, and finds recognition in no English jurisdiction. Smith v. Wells, 46 N. E. (Ind.) 1000; Mason v. Fischer, 21 South. (Miss.) 5; Hospes v. Man'f'g. Co., 48 Minn. 174; Bank v. Mining Co., 42 Minn. 441. The better reasoning seems to be in accord with the latter cases.

Generally the stockholder is not liable to the creditor when he is not liable to the corporation, unless public policy or the doctrine of estoppel intervenes. Burgess v. Seligman, 107 U. S. 20. Hence we see that the stockholder
whose stock is fully paid up, has no individual liability to
the creditor, unless such liability is enlarged by contract
or imposed by the constitution or by statute.

CHAPTER II.

INDIVIDUAL LIABILITY IN ADDITION TO THE LIABILITY
IMPOSED BY THE COMMON LAW.

(a) By Contract.

The assumption of liability by contract is but the
promise to answer for the debts and defaults of another, as
the corporation and the stockholders are distinct. Flint v.
Pierce, 99 Mass. 68;

(b) By Constitution.

Several of the states have included in their constitu-
tions provisions increasing the personal liability of stock-
holders in favor of creditors, and other states delegate this
regulation to the legislature. This added liability may be a "double liability" as prevails under the Kansas Constitution, or a "proportional liability" as is provided by the California Constitution. Other constitutions put special liabilities upon certain kinds of corporations, as banking or manufacturing corporations. Still other constitutions say that the legislature may make such provisions as it may see fit in imposing individual liability upon stockholders. Art. 8 Sec. 2, N. Y. Const. In direct contrast to the power imposed in the legislature by the New York constitution, is the West Virginia constitution which prohibits the legislature of that state imposing any individual liability whatever upon stockholders of corporations.

Over these constitutional provisions much conflict has arisen as to whether they are self-executing, or require the aid of appropriate legislation to put them in operation.
Over this question there have long been conflicting decisions. The following cases hold these provisions not self-executing:


But the question of whether or not the statute will be required to put in operation the provision of the constitution is largely dependent upon the wording of the constitution. In fact this can, in most cases, be said to be controlling.

(c) By Statute.

The third way in which an individual liability to the creditors of the corporation is imposed upon the stockholder
is by statute; this is also the most frequent way of imposing this exceptional liability. It almost universally exists throughout the United States as to stockholders in banks, and often as to manufacturing and business corporation stockholders, but it is rarely applied to the stockholders of railroad corporations.

The general rule is that statutes imposing this liability are to be strictly construed as being in derogation of the Common Law. Chase v. Lord, 77 N. Y. 1; Menick v. Iron Works, 25 W. Va. 199; O'Reilly v. Bard, 105 Pa. St. 569; Dane v. Dane M'f'g. Co., 14 Gray 489; Barnes v. Wheaton, 80 Hun 8; Wing v. Slater, 35 Atl. 302. But some jurisdictions and also some text writers repudiate the doctrine of strict construction of the statutes and hold that "a just and reasonable construction" should be given to them. Thompson's Com. Law of Corp. sec. 3016; Bohn v. Brown, 33 Mich. 257; Davidson v.
Rankin, 34 Cal. 503; A third class of holdings is that the statutes are remedial and should be liberally construed.


1. Penalty.

The liability imposed upon the stockholder by these statutes may either be as a penalty for the violation of regulations prescribed for the government of the corporation, or as a part of the undertaking of his contract of subscription to the capital stock, since the terms of that contract are dictated in the charter under which the company is organized. Or as is held in Marshall v. Sherman, 148 N. Y. 9, not a contractual liability, but a liability purely statutory.

If a penal law it will not be enforced in another state, for, as said by Chief Justice Marshall, in The Antelope, 10 Wheaton 66. "The courts of no country execute the penal laws of another."
The Federal Courts have no power to execute the penal laws of the individual states. Gwin v. Brudove, 2 Howard 29: Gwin v. Barton 6 Howard 7; Huntington v. Attrill, 146 U.S. 657; Wisconsin v. Pelican Ins. Co., 127 U. S. 265. And this is so even if the liability has been reduced to judgment in the state imposing it. "The essential nature and real foundation of a cause of action are not changed by the recovery of a judgment upon it, and the technical rules which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court to which judgment is presented for affirmative action, from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it."


As to what is a "penal law" there are conflicts of opinion. The Supreme Court of the United States has taken a
liberal view in favor of the extraterritorial effect of the statutes. Dennick v. Ry. Co., 103 U. S. 11; Huntington v. Attrill, 146 U. S. 657. In this last case the question was whether a statute making the officers of a corporation, who sign and record a false certificate of the amount of its capital stock, liable for its debts, is a penal statute which would not be enforceable in any foreign jurisdiction. Held, this statute is not penal. The question whether a statute of one state which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another state depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to the person injured by the wrongful act. If the highest court of a state declines to give full faith and credit to a judgment of another state because in its opinion
the judgment was for a penalty; this court must determine for itself whether the original cause of action was penal in the international sense.

Huntington v. Attrill, 1893, A. C. 150. Is a parallel case to the above and between the same parties. It is an action upon a judgment against the respondent obtained in a New York court under a statute making all officers who sign a false report as to the corporation's liabilities, jointly and severally liable for all the debts of the corporation. The respondent pleaded that the judgment was for a penalty inflicted by the municipal law of New York, and that the action being of a penal character ought not to be entertained by a foreign court. Held, that the action being by a subject to enforce in his own interest a liability imposed for the protection of his own private rights, is remedial and not penal, so is not within the rule of international law which prohibits
the courts of one country from executing the penal laws of another. It is the duty of the court where the action is brought to decide whether the statute in question is penal within the meaning of the international rule, and such court is not bound by the interpretation of the court of the state where the statute exists.

2. Full faith and credit.

It is interesting to note in connection with the two Huntington v. Attrill cases, that the one was decided in a jurisdiction where the constitution provided that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." Art. IV, sec. 1 U. S. Const. While the other case was decided in a jurisdiction where there was no such constitutional provision but the same final determination was reached in both cases.

The effect of this constitutional provision is that the
courts will recognize and approve all done under these "public acts, records and judicial proceedings" but will not necessarily entertain affirmative actions to enforce them if they are in no sense contractual, but purely statutory or penal.

Defendant was a stockholder in a New York corporation organized under a general act authorizing the formation of corporations for manufacturing purposes, which provided that all the stockholders of every corporation incorporated under that act should be severally, individually liable to the creditors of the corporation to an amount equal to the amount of stock held by them, until the whole amount of capital stock fixed by the charter shall have been paid in, and a certificate thereof made and recorded. Another section provided that no stockholder shall be individually liable on any debt so contracted which is not to be paid within one year or unless suit is begun against the company within one year after the
debt becomes due, and no suit shall be brought against any stockholder until an execution against the corporation is returned unsatisfied in whole or in part. Held, that the liability of the stockholder grows out of his contract in becoming a stockholder, a liability in the first instance and is not a penalty or in the nature of a penalty, or forfeiture for the non-performance of duties or acts of the officers.

The courts of this state may enforce such contracts. Flash v. Conn, 16 Fla. 428. This holding was affirmed in 109 U.S. 371.

This case (Fla.) disapproves and holds directly contrary to Halsey v. McLean, 12 Allen (Mass.) 438, which case arose under the same New York statute, the statute was declared to be penal and the Massachusetts courts refused to enforce it.

In the opinion it was said "How far a mere statute liability shall be respected and enforced beyond the jurisdiction by which it is created and limited and within which it has the
force of positive law, is a question of comity and public policy in the administration of justice." In Coykendall v. Miles, 10 Fed. Rep. 342, the court said of this construction, "I do not feel inclined to extend, what I consider, the ill-liberal and narrow rule of comity, or want of it, which stops all remedies at the line of the state."


Without doubt the constitutional requirement that "full faith and credit shall be given in each state, etc." implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home, if they are in any sense contractual but
not if penal. Mills v. Duryea, 7 Cranch 481.

In Chicago etc. Ry. v. Wiggins, 119 U. S. 615, it was said, that Art. IV, sec. 1 of the U. S. Const. implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home.

W. R. Bigelow, in 10 Harvard Law Review 228, says, "Although it is generally said that the statute creating this liability can operate only by comity, still it may be that such statutes have a stronger claim for recognition under Art. IV sec. 1, U.S.Const. Huntington v. Attrill, 146 U. S. 657; Glenn v. Grath, 147 U.S. 360; Flash v. Conn, 109 U.S.371. The Massachusetts courts hold unqualifiedly that if the liability of the domestic stockholder in a foreign corporation exists wholly by virtue of a foreign statute the principal of law that the legislation of one state has no operation in
another state *ex proprio vigore*, but only *ex comitate*, applies. Errickson v. Nesmith, 15 Gray 221; Smith v. Life Ins. Co., 14 Allen 336; Halsey v. McLean, 12 Allen 441. This is also held in Tuttle v. Nat. Bank of the Rep., 161 Ill. 497, where the court said, "The statute of the state of Kansas has no force and effect in another state, and the enforcement of a remedy in this action in this state depends upon our express or tacit consent, which is usually expressed as the comity between states."

"The statutes of one state have *ex proprio vigore*, no force or effect in another. The enforcement in our court of some positive law or regulation of another state depends upon our own express or tacit consent." Marshall v. Sherman, 148 N. Y. 9.
CHAPTER III.

CLASSIFICATION OF STATUTES IMPOSING INDIVIDUAL LIABILITY.

(a) Contractual.

There are three general classes of statutes imposing this individual liability:

First. Those statutes where a liability is retained until all the capital stock is paid in. This is a very common form of statute. (See Appendix.)

It imposes a purely contractual liability, being part of the contract of the stockholder when he subscribed for the stock, and it would seem safe to say that no state would refuse to enforce such a statute of another state. Latimer v. Citizens Nat. Bk., 71 N. W. (Ia.) 225. The statute in question was a S. Dak. statute; Rule v. Omega Stove Co., 4 Am. & Eng. Corp. Cs. N. S. (Minn.) 300. A case arising under the Ohio statute.
In Russel v. Pacific Ry. Co., 113 Cal. 258. Plaintiff brings an action as a judgment creditor of the defendant railroad, for the appointment of a receiver, and the enforcement of the liability of its stockholders under an Illinois statute. Many of the stockholders residing in California are made defendants. A complaint in intervention is filed in behalf of creditors in Illinois. The Illinois statute is in part as follows: By the eighth section of the act under which the Pacific railroad was incorporated it was provided that "each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided ###. Whenever any action is brought to recover against the corporation it shall be competent to proceed against any one or more stockholder at the same time, to the extent of the balance unpaid by such stockholder upon the..."
stock held by them respectively, whether called in or not, as in case of garnishment." The interveners contended that this section created a liability in the nature of a contract liability, and which is enforceable wherever the stockholder can be found. But in this case the suit was not entertained because the statute provided an exclusive remedy.

But the Massachusetts courts have gone a long way, it seems, in refusing to enforce this liability in New Haven etc. Co. v. Linden Spring Co., 142 Mass. 349. The case arose under the Connecticut law. In refusing to enforce this class of liability the court said, "That the statutes of a state do not operate extra territorially will be conceded. How far they should be enforced beyond the limits of the state which has enacted them depends upon several considerations, as to whether any wrong or injury will be done to the citizens of the state in which they are sought to be enforced, whether the
policy of its own laws will be controvened or impaired, and
whether its courts are capable of doing complete justice to
those liable to be effected by their decrees."

(b) Penal.

Second. Those statutes imposing an individual liability
upon stockholders, as well as officers and directors, for
failing to file some certificate, or make some reports, or
failing in some other way to perform some requirements.

These statutes are in their nature penal. Their purpose
is to inflict a penalty, or punishment, for such neglect, and
by most jurisdictions are called penal statutes, and are re-
fused enforcement in foreign jurisdictions, under the well
established principle, that one state will not enforce the
penal laws of another state. This class of statutes is found in
Nebraska and many other of the states.

a liability upon the stockholders for failing to make a re-
port of assessments. Held, the statute is penal, and will not
be enforced in another jurisdiction.

Most of the cases under this head impose the liability
upon the officers or directors, and such statutes have been
held penal. Derrickson v. Smith, 27 N. J. L. 166; Stokes v.
Slickny, 96 N. Y. 323; Chase v. Curtis, 113 U. S. 452. But
the cases of Huntington v. Attrill, 146 U. S. 652, and 1893,
A. C. 150, arising in different countries and holding the same
way, seem to conflict with the previous general holdings and
say that a statute of this nature, which made the officers of
a corporation who signed and recorded a false certificate of
stock individually liable, is in the international sense not
penal, and has extra-jurisdictional effect.

(c) Statutory.

Third. This class is where an individual liability is
imposed, although the capital stock is all paid in. It is a purely statutory liability independant of any contract.

It is over this class that the jurisdictions differ, and the conflict in the judicial mind has arisen. Under this head the Kansas, California, Kentucky and Ohio statutes must be placed.

1. Under Kansas Statute.

All of the following cases arose under the Kansas statute which is set forth in the abstract of Marshall v. Sherman, in that case and also in the cases of Fowler v. Lamson and Wyatt v. Moorehead, the courts refused to give extra-territorial effect to the statute. In Tuttle v. Nat. Bk. of Rep. by a divided court there was a like holding.

The cases arising in Massachusetts over the Kansas statute will be given later.

Marshall v. Sherman, 148 N. Y. 9, was an action brought
by a creditor of a state bank incorporated under the laws of Kansas, against the defendant, a stockholder residing in this state. The question arose on a demurrer to the complaint. The bank transacted business until 1891, when proceedings were instituted against it in that state which resulted in the appointment of a receiver to wind up its affairs. The complaint alleged, that it left debts unpaid, and that since 1889 defendant has been the owner of 30 shares at the par value of $3000, that plaintiff is a creditor of the bank to the amount of $1800, that he caused execution to be issued upon his judgment against the bank for that amount but $1000 is still unpaid, and judgment is demanded against the defendant as a stockholder, for that amount, under articles of the Kansas constitution and statute. The constitution provides, "Dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by such stockholder, and by such other means as shall
be provided by law." And the statute, sec. 44. "If any corpo-
ration created under this, or any general statute of this
state, except railroad or charitable or religious corpora-
tions, be dissolved, leaving debts unpaid, suit may be brought
against any person or persons who were stockholders at the
time of such dissolution without joining the corporation in
such suit, and if judgment be rendered and execution satisfi-
ed, the defendant or defendants may sue all who were stock-
holders at the time of such dissolution, for the recovery of
such portion of the debt for which they were liable, and the
execution upon the judgment shall direct the collection to be
made from property of each stockholder respectively; and if
any number of such stockholders shall not have property
enough to satisfy his or their portion of the execution, then
the amount of the deficiency shall be divided equally among
all of the remaining stockholders, and collection made ac-
cordingly, deducting from the amount a sum in proportion to
the amount of stock owned by the plaintiff at the time the
company was dissolved." And also sec. 32, "If any execution
shall have been issued against the property or effects of a
corporation, except a railroad, or religious or charitable
corporation, and there cannot be found any property whereon
to levy such execution, then execution may be issued against
any of the stockholders, to an extent equal in amount to the
amount of stock by him or her owned, together with any amount
unpaid thereon; but no execution shall issue against any
stockholder, except upon an order brought or instituted, made
upon motion in open court, after reasonable notice in writing
to the person or persons to be charged, and upon such motion
such court may order execution to issue accordingly, or the
plaintiff in the execution may proceed by action to charge
the stockholders with the amount of his judgment."
The court holds that the provision of the constitution is not self-executing. So the question is whether a right of action unknown to the Common Law, and existing only by force of the statute of another state, can be enforced in this state, or outside of the jurisdiction where the corporation is domiciled. The defendants relation to the corporation is governed by the laws of the state of its creation, and the general rule is that the statutory liability of stockholders in foreign corporations cannot be enforced except at the domicile of the corporation, when the law of the domicile provides the remedy. It is apparent from the Kansas statutes that they set forth a special and peculiar remedy. But if under any circumstances the action could be maintained in this jurisdiction it must be in a suit by such modes of procedure as like liabilities, created under our own statutes, are enforced against our own citizens. There is no reason
why the plaintiff should be permitted to enforce his debt in this jurisdiction against a citizen of this state in a form of action different from that which a creditor of a domestic corporation may prosecute against a domestic stockholder.

In this state the liability must be enforced in equity in a suit brought by all the creditors against all the stockholders. In the case at bar the plaintiff's right of action has no other legal or moral, basis than the fiat of the legislature of another state. It is a principal of universal application, recognized in all civilized states, that the statutes of another state have no force or effect in this state. The enforcement in our courts of some positive law or regulation of another state depends upon our own express or tacit consent. It belongs exclusively to each sovereignty to determine for itself whether it can enforce a foreign law without, at the same time, neglecting that duty which it owes citizens
or subjects of its own. The right asserted and remedy demand-
ed is such that it cannot be given any practical effect
here without injustice to our own citizens.

Fowler v. Lamson, 146 Ill. 472, is another action found-
ed upon the Kansas statute. The court said, "It is well settl-
ed that these special remedies, having been provided for, the
enforcement of the individual liability of stockholders, cre-
ated by the laws of Kansas, they alone can be pursued to en-
force that liability. The reason of this rule is manifest.
The liability only exists by force of some constitutional or
statutory provision, and the person incurring that liability
is presumed to do so subject to its enforcement by the spe-
cial provision made for that purpose and no other. There is al-
so the objection to this proceeding that it is an attempt to
enforce the individual liability of the defendants in a juris-
diction other than that in which the corporation exists; the
rule being, that where a special remedy is given creditors of a corporation against its stockholders, the liability cannot be enforced in another state."

Wyatt v. Moorehead, 4 Oh. N. P. 435. The court said in refusing to enforce the liability imposed by the Kansas statute. "The remedy sought to be enforced is inconsistent and at variance with the mode of procedure here. It is inequitable. The law of comity does not require the enforcement of this liability against the defendant according to the special remedy provided by the law of Kansas, when it clashes with the rights of our own citizens and the policy of our laws."

In Tuttle v. Nat. Bk. of Republic, 161 Ill. 497, respondent, the bank, recovered a judgment against Tuttle, the appellant, by reason of his being a stockholder in the Edwards County Bank of Kansas. It was held that the relation of a
stockholder to the corporation is determined by the laws of the state of the creation of the corporate body, and where the law of the domicile of the corporation creates a special remedy, that remedy cannot be enforced except within the jurisdiction of the domicile of the artificial body. The statutes of the state of Kansas have no force in another state and the enforcement of the remedy in this state depends upon our tacit assent, which is usually expressed as the comity between states. A remedy special to a particular foreign state is not, by any principle of comity, enforceable here, and must be applied within the jurisdiction of the domicile of the corporation. It is of the highest moment that full faith and credit be given by each state to the judicial proceedings of sister states. This may be done without giving extraterritorial effect to the legislation of sister states. Each state determines the method of procedure in its courts.
and their jurisdiction. In this there is neither injustice nor hostility to a sister state, but it would be hostile to every principle of sovereignty to be compelled to import into this state the peculiar remedies and various special methods of procedure invented by the legislatures of the various states. The important question here is whether the courts of this state will, in any form, take jurisdiction of a question arising as to the relations of creditors and stockholders of a corporation of another state, where a special remedy is provided by statute, before there is a determination by the courts of such state of the just proportion of the corporate indebtedness to be born by solvent stockholders of such corporation. It is for the courts of that state to enter a decree, stating the account, winding up the affairs of the corporation and determining the relation of the stockholders, creditors and corporation to each other. When that question
has been determined by the courts of that state, then if it becomes necessary, the creditors, stockholders and the corporation, or its representatives, may, as against stockholders who are domiciled here, appeal to the courts of this state and have, as against such domiciled stockholders, adequate relief. (Three judges dissented, and held that the clause in the Kansas constitution which imposes the double liability upon stockholders, as interpreted by the Supreme Court of Kansas is self executing and that interpretation should be followed here. While the liability is statutory, it is one which arises upon the contract of subscription and an action to enforce it is transitory.)

In the following cases, also arising under the Kansas statute, the statute was construed as contractual and it was given extraterritorial effect and force.

Howell v. Manglesdorf, 33 Kan. 194. Held, that the in-
individual liability imposed upon the stockholders, while statutory, it arises upon the contract of subscription to the capital stock of the corporation, and an action to enforce the same is transitory and may be brought in any court of general jurisdiction, where personal service can be had upon the stockholder.

76 Fid. Ref. 696.
Nat. Bk. of Oxford v. Whitman, (U.S.), 5 Am. & Eng. Corp. Cs. N.S. 273, arose under the Kansas statute. It was held that the statute was transitory and could be enforced against a stockholder in a foreign jurisdiction.

76 Fid. Ref. 754.
McVickery v. Jones, (U.S.), 3 Am. & Eng. Corp. Cs. N.S. 35, arose under the same statute in the Circuit Court of New Hampshire, and the holding was the same as in the later case given above.

Cushing v. Perot, 175 Pa. St. 66, was another case under the Kansas Statute. The court said, "Both by the weight of
reason and authority the liability created by this statute is contractual, and should be enforced by any court having juris-
diction of the parties." But the case went on another point.

Ferguson v. Sherman, 116 Cal. 169, was an action to en-
force a stockholders liability under the Kansas statute.

Held, when the statutory liability is not in its nature penal
and does not depend for its enforcement upon remedies
peculiar to the courts of the state which created the lia-
bility, but is a simple personal liability contracted for by
the stockholders, and enforceable at law by a judgment credit-
or of the corporation in the state where the corporation was
created, after the return of execution nulla bona, such action
may be brought by such judgment creditor in this state against
California stockholders of the corporation. The contract of
stockholders in a Kansas corporation, as respects personal
liability under the Kansas statute, is in the nature of a
contract of guaranty, upon which an action will lie, after the creditors remedy against the corporation has been exhausted, in any state where jurisdiction of the person of a stockholder may be obtained.

Rhodes v. U. S. Nat. Bk., 24 U.S.App. 608, was an action of assumpsit brought by the bank, a Kansas corporation, against Rhodes, a citizen of Illinois, to enforce a stockholders liability imposed by the constitution and statutes of Kansas upon stockholders of insolvent corporations under the laws of that state. It was held that the Kansas decision, that the statute creates and enforces a personal liability upon every stockholder, and that the obligation is by contract in the nature of a guaranty, and may be enforced by action in any tribunal where proper service can be had, is binding upon this court, and the contention of defendants that the statute merely provides a remedy which cannot be enforced outside of
the state, cannot be upheld if any regard be paid to the Kansas decisions.

(2) Enforcement in Massachusetts.

Massachusetts it seems virtually refuses to enforce the liability of this class imposed by a foreign statute.

Bk. of N. America v. Rindge, 154 Mass. 203. Plaintiff is a corporation of the state of New York. Defendant is a resident of California who owns 50 shares of Kansas bank stock. Plaintiff recovered judgment in Kansas against the said bank and took out execution which was returned unsatisfied. No steps were taken in Kansas to charge defendant as stockholder; but, he being found in Massachusetts the plaintiff brings this action to charge him personally to the amount of the par value of his stock, under the law of Kansas to that effect.

Held, this court has often declined to exercise jurisdiction to enforce a liability imposed upon stockholders in corpo-
rations established in other states under statutes of those states. It may be held on the grounds set forth in Post v. Toledo etc. Rv., 144 Mass. 341, because it is a suit which involves the relation of a foreign corporation and its stockholders and complete justice can only be done by the courts of the jurisdiction where the corporation was created. The precise decision in this case is: "A resident in the state of New York cannot maintain, in the courts of this state, an action against a resident of the state of California to establish his personal liability as a stockholder of a corporation organized in Kansas and having no place of business in this state for a debt of that corporation to plaintiff under laws of Kansas, providing for a certain special and limited liability on the part of stockholders, when no judicial proceedings have been taken in Kansas to ascertain and establish the liability of defendant as such stockholder."
All of the Massachusetts cases seemed to tend the same way until the recent case of Handcock Nat. Bk. v. Ellis, 166 Mass. 414, which case seemed to broaden the policy of that state and sustained a right of action on the following facts; A declaration which sets forth that according to the laws of Kansas the defendant stockholder of a corporation, organized under the laws of that state, is liable to a judgment creditor of the corporation as upon a contract which is sueable anywhere, is good; and the fact that the corporation is in the hands of a receiver is immaterial, if, under the declaration, the liability of defendant is direct to creditors, and the receiver cannot enforce it.

But the still later case of Coffing v. Dodge, 167 Mass. 231, holds that an action cannot be maintained to enforce the liability of a stockholder in a foreign corporation where there is no allegation that the liability is contractual, or
that it has been so construed by the courts of the foreign state, and where there are no allegations from which it can be seen that no injustice to others will be done by entering the action. The court distinguished Hancock Nat. Bk. v. Ellis, Supra, because in that case it was alleged that the liability was contractual and had been so construed by the Kansas courts, and there were also allegations showing that no injustice to others would be done.

Judge Thompson says of the Massachusetts doctrine, "Under this holding all that the stockholder of a foreign corporation will have to do, to escape his liability, will be to move with his property into Massachusetts and Massachusetts will thus become the 'White Friars' of dishonest stockholders."

3 Thomp. Com. on Law of Corp. sec. 3059.

West Virginia seems to follow the early Massachusetts cases in Nimick v. Iron Works, 25 W. Va. 185. This case was
under the Ohio statute which is in the same class as the Kansas statute. But this holding may be due to the fact that the action was brought in equity and jurisdiction, from that fact, could not be obtained of all parties.

In Nimick v. Iron Works, Supra, the defendant was a manufacturing corporation organized under the laws of Ohio, which laws impose upon the stockholder an individual liability equal to the amount of stock held by them, and it provided that a stockholder or creditor can enforce such liability by an action which shall be for the benefit of all the creditors of the corporation and against all persons liable as stockholders, and the amount for which they are each liable shall be determined in the one action. This action was brought against the corporation and such stockholders as were within the jurisdiction of the court. Held, that the remedy so prescribed for the ascertainment and enforcement of this liabi-
lity must be pursued in the courts of the state of Ohio, where
the corporation was located, and by the local statutes of
which alone the liability exists, and a bill in equity to
ascertain and determine the extent of this individual liabi-

lity against the stockholders of such corporation cannot be
sustained in the courts of West Virginia, because the juris-
diction can not be obtained of the corporation nor any of its
stockholders or officers residing out of the state. It would
therefore be a vain thing to entertain plaintiff's bill when
we are unable to grant the relief prayed for.

In Aultman's Appeal, 142 Pa. St. 505, the court took a
somewhat different view of the Ohio statute and said "that
when the owners subscribed for or bought the stock they as-
sumed all the obligations imposed upon them as owners. It was
a contract to pay not only for the stock, but so much in ad-
dition as would be necessary for the purpose of securing the
the creditors of the corporation. This contract could be enforced in any state in which the defendants were amenable to the process of the court. In the construction of this statute we are bound to respect if not to follow implicitly the decisions of the court of Ohio. ....We have no difficulty then in holding that the courts of this state have jurisdiction to enforce the contract.

When the statute is given extraterritorial effect the construction of the statute at home is generally followed. Aultman's Appeal, 142 Pa. St. 505; Elmendorf v. Taylor, 10 Wheat. 160. For the liability of the stockholder is imposed and determined by the laws of the state where the corporation is incorporated and when this liability is contractual the foreign state will seek to carry out the provisions of the law as the home state would.

First Nat. Bk. v. Mining Co., 42 Minn. 327. "When a
person becomes a stockholder in a corporation organized under the laws of a foreign state, he must be held to contract with reference to all the laws of the state under which the corporation is organized and which entered into its constitution, and the extent of his individual liability as a shareholder to the creditors of the corporation must be determined by the laws of that state, not because such laws are in force in this state, but because he has voluntarily agreed to the terms of the company's constitution. This liability may be enforced by creditors wherever they can obtain jurisdiction of the necessary parties.

Bank v. Rindge, 57 Fed. Rep. 279; Flash v. Conn; 109 U.S. 371; Savings Bk. v. O'Brien, 51 Hun 45; New Haven Co. v. Linden Spring Co., 142 Mass. 349; Young v. Farewell, 139 Ill. 326; Jessup v. Carnegie, 80 N. Y. 448, all hold that the construction of a statute by the courts of that state
where the statute exists, is binding upon the other state.

CHAPTER IV.

REMEDY.

1. Prescribed by Statute.

It is a general rule almost without exception, that the courts of one state will enforce the statutory liability of stockholders created in another state, when that liability is contractual, and when the statute does not provide the distinct remedy, for then the Common Law supplies an adequate remedy and one that is not contrary to the policy of the state. Ex parte Van Riper, 20 Wend. 505.

But where the statute does impose a remedy, that remedy and that alone can be pursued. Barnes v. Wheaton, 80 Hun 8; Pollard v. Bailey, 20 Wall. 527, where Chief Justice Waite said, 'The liability and the remedy were created by the same statute; this being so the remedy provided is exclusive of
all others. A general liability created by statute, without a remedy, may be enforced by an appropriate Common Law action, but where the provision for the liability is coupled with a provision for a specific remedy, that remedy and that alone must be employed." Other cases in accord with the above holding are, Morly v. Thayer, 3 Fed. Rep. 741; Poughkeepsie v. Ibbolson, 24 Wend. 473; Nimick v. Iron Works, 25 W. Va. 184; Pollard v. Bailey, 20 Wall. 526; Bank v. Franklyn, 120 N. Y. 747; Latimer v. Citizens Nat. Bk. (Ia.) 71 N. W. 225; Savings Bk. v. O'Brien, 51 Hun 45.

The procedure in cases under these statutes must, on the other hand, be according to the lex fori. Drinkwater v. Portland etc. Co. 18 Me. 35. "The course of procedure must be regulated by the law of the state where the remedy is sought to be pursued. This must necessarily be governed by the lex fori."

Russel v. Pacific Ry. Co., 113 Cal. 258, held where a statute creates a right and prescribes a remedy for its enforcement that remedy is exclusive. When a liability is created which is not penal and no remedy is prescribed, that liability may be enforced wherever the party is found; the procedure, however, will be entirely governed by the law of the forum. If the law creating the liability provides for a particular mode for enforcing it, the mode limits the liability. If it be a contract, then they contracted with the understanding that they can be held liable in no other way; and such a liability can be enforced in no other state. By the eighth section of the Illinois statute, a special remedy is provided and it was plainly intended that it should be the only remedy.

May v. Black, 77 Wis. 101. This action was brought for work and labor, in behalf of plaintiff and all others having
claims who may come in, against the Nanaimo Mining Co., a Michigan corporation, and defendant, and others, stockholders of such corporation residing in this state. The action is in equity and the prayer is that defendant be adjudged to pay into court the amount due to each. The constitution of Michigan provides that the stockholders of all corporations shall be individually liable for all labor performed for the corporation, and a statute provides "that said liability may be enforced in an action in assumpsit", and that "suit for such labor may be commenced against any or all the stockholders and the corporation jointly." Held, that the remedy in assumpsit is exclusive, and that the corporation must be a party. So a bill in equity will not lie, and the remedy can be enforced only in Michigan, as nowhere else can the corporation be made a party. Also when a special remedy is prescribed by statute, under which the corporation is formed, it
must be enforced in the courts of that state exclusively.

Errickson v. Nesmith, 4 Allen, 233, was a bill in equity to recover on certain promissory notes given by a New Hamp-
shire corporation. The bill alleges demand made on the corpo-
rathon, and payment not made, and also that the stockholders are personally liable under the New Hampshire statute which provides that the stockholders shall be jointly and severally liable for all debts and contracts of such corporations, until the whole amount of the capital stock of the corporation shall have been paid in. This bill was brought in behalf of all the creditors against the stockholders who are residents of Massachusetts. Held, the bill cannot be maintained. The liability imposed is of a peculiar and limited character and to be enforced only in the mode prescribed in the statute.

This bill must be brought in the state which created the cor-
poration. The corporation must be a party. But we have no
jurisdiction that will reach such corporation out of this commonwealth, and the same is true of the stockholders residing in New Hampshire.

In general a creditor of a corporation whose shareholders are made personally liable for its debts by a statute not providing a specific remedy, may maintain a suit to enforce this liability wherever he can obtain jurisdiction over the necessary parties. The right to bring this action, if the liability is contractual, it would seem, will not be denied in any state to the inhabitants of any other state, if there is jurisdiction of the proper parties defendant, and the statute does not prescribe the remedy. Aultman's Appeal, 98 Pa. St.505; Ex parte Van Riper, 20 Wend.505.

As has already been said if the statute does not prescribe the remedy the common law will give one, but the most of the statutes do prescribe the remedy and that, as before
mentioned is exclusive. Judge Thompson, sec. 3054, says, "that it may be doubted if there is any reason for this rule either in common sense or sound legal reasoning."

2. Must be exhausted against the Corporation.

Unless otherwise expressly provided by the statute it is generally held that the creditor must exhaust his remedy against the corporation before he can come back upon the stock for his individual liability. There must be a judgment from the court of the state where the corporation resides and an execution issued and returned nulla bona. This rule arises from the fact that the liability of the stockholder is not the usual fund for the payment of corporate debts, but the corporate treasury is the primary source, so the statutory liability is not to be resorted to until the corporate assets, including the unpaid subscriptions for stock, are exhausted. Cook on Corporations, sec. 219; Harper v. Union
In Young v. Farwell, 139 Ill. 326, a creditor of an insolvent corporation organized under the laws of another state must first seek his remedy in the courts of such state, and there having authoritively determined the respective relations of the creditors and stockholders of the corporation towards the corporation, and towards each other, and then if it shall be necessary their rights as respects stockholders domiciled in this state may be enforced in this state. Handy v. Draper, 89 N. Y. 334; Lynde v. Patterson, 112 Ill. 196; New Haven etc. Co. v. Linden Springs Co., 142 Mass. 353; Railroad Co. v. Railroad Co., 135 Mass. 134; Aultman's Appeal, 98 Pa.St. 505; Gregory v. Railroad, 40 N.J.Eq. 38; Rice v. M. H. Co., 56 N.H. 114; May v. Black, 77 Wis. 101.

There are, however, authorities holding that a judgment against the corporation is not a prerequisite to the enforce-

In Morrow v. Superior Court, 64 Cal. 383, the court said, "The liability of the stockholder is as distinct and separate from that of the corporation as it would be if the act had made no provision for any other liability than that of the stockholders for the debts of the corporation."

Coleman v. White, 14 Wis. 762. In this case it was said of a statute imposing an individual liability equal to the amount of the stock, "The liability is primary and absolute and attaches the moment the debt is contracted by the bank. It is a liability of all the stockholders to all the creditors on the principle of co-partnership; the stockholders standing on substantially the same footing as though they were part-
ners only that the responsibility of each is limited to a sum equal to his share, or shares, of stock. Subject to this limitation they are answerable as original debtors and their liability more nearly resembles that of co-partners than any other with which it can be compared."

Generally proceedings against the corporation are not required when they would be nugatory; as where the corporation has assigned or has been adjudged bankrupt or in any other case where it clearly appears that an execution would be useless. Hirshfield v. Bopp, 145 N. Y. 84; Morgan v. Lewis, 46 Oh. St. 1; State Saving Asst. v. Kellogg, 52 Mo. 583; Paine v. Stewart, 33 Conn. 516; Latimer v. Citizen's Nat. Bk., (Ia.) 71 N. W. 225,

But when the statute expressly says, "All proceedings shall be ------- on the judgment obtained against the corporation." Then it is necessary to get judgment. Rocky Mt.

Rule v. Omega Stove Co, (Minn.) 4 Am & Eng. Corp. Cs. 300, holds that a judgment against the corporation may be dispensed with when it is shown that it is impossible to get it.


This was an action brought in the U. S. Circuit Court of New York by a creditor of a Rhode Island manufacturing corporation against the executors of a stockholder in that corporation to enforce the individual liability which the statute of Rhode Island imposes upon stockholders in such corporations for the corporate debt. By the statute of Rhode Island, "The members of every manufacturing corporation thereafter incorporated shall be jointly and severally liable for all debts and contracts entered into by said corporation until the whole amount of the capital stock shall have been paid in, and a certificate thereof recorded, and when the stockholder
shall be so liable, his person and property may be taken thereafter on any writ of attachment or execution issued against the company for such debt, in the same manner as on writs and executions against them for their individual debts, or the creditor may, instead of such proceeding have his remedy against the stockholder by bill in equity. Held, when the statutes of the state which creates a corporation making the stockholders liable for the corporate debts, provides a special remedy, the liability of a stockholder can be enforced in no other manner in a United States Court. So this action cannot be maintained without the plaintiff having first obtained judgment against the corporation even if the corporation has been adjudged bankrupt.

3. At Law.

The question which now comes up is whether, when the statute does not prescribe the remedy, the creditor shall
The New York courts make the distinction that if the action is brought to enforce the stockholders liability before the capital stock is all paid in the proper remedy, is at law. Handy v. Draper, 89 N. Y. 334. But if the capital stock is not all paid in the remedy is in Equity. Marshall v. Sherman, 148 N. Y. 21.
proceed in law, or in equity, or in either law or equity.

This, says Cook on Corporations sec. 220, "is the most difficult, unsettled and unsatisfactory question concerning the statutory liability of stockholders. The question is largely one of practice and from experience the courts will doubtless evolve that rule which is most just and convenient."

Many jurisdictions hold the proper remedy to be at law. These courts consider the liability of the stockholders as that of partners, or in the nature of a partnership liability. When this remedy is allowed then any creditor can proceed against any stockholder to enforce his liability. Handy v. Draper, 89 N. Y. 334.

When the action is at law it is generally held that the liability is several and individual. McCarty v. Lavasche, 89 Ill. 270; Hull v. Burtis, 90 Ill. 213; Branch v. Baker, 53 Ga. 502. But in Pennsylvania the creditor proceeds against
the stockholder in an action at law upon the original contract, making the corporation and all of the stockholders parties. Hoaid v. Wilcox, 47 Pa.St. 51; Mansfield Iron Works v. Willcox, 52 Pa. St. 377.

Cook on Corporations, says, "Where an action at law can be maintained, and the stockholders liability is limited and several, each stockholder being made liable for a sum certain, a separate action will lie against each one." Bank of Poughkeepsie v. Ibbotson, 24 Wend. 473; Terry v. Little, 101 U.S. 216; Rhodes v. U. S. Nat. Bk., 24 U.S.App. 608.

4. In Equity.

The weight of authority seems to be that the proper remedy is in equity when the statute provides no remedy.

Cook on Corporations, sec. 222, says of the equitable remedy, "The remedy in equity is the favorite remedy of the courts. It is just, certain, impartial and clear. It enforces
once for all the liability of the stockholders, and at the
same time provides for contribution. It distributes the as-
sets equally and equitably among all the corporate creditors.
It prevents a multiplicity of suits, and avoids the difficult,
question as to whether a suit at law will lie."

Of the action at law the court said in Mason v. Alex-
ander, 44 Oh. St. 338, "By reason of the great number of
stockholders, the frequent transfers of stock, the decease
of parties, and of other causes, delays- vexations, expen-
sive and almost interminable- seem to be inevitable in all
such proceedings, so much so that such liability has grown
to be looked upon as furnishing next to no security at all
for the debts of corporations."

It is evident that the equitable remedy is the more just
there the assets of the corporation are first used and then
the stockholders are made liable pro rata, and no one stock-
holder is come upon for his full liability while another may be held liable for nothing. Or where there are more debts than the full individual liability will meet then the creditors are paid at the same rate instead of one getting his full pay and another nothing. Griffith v. Mangam, 73 N. Y. 611.

In Granella v. Bigelow, (Wis.) 71 N. W. 111, it is held that equity is the proper forum in which to enforce the stockholders individual liability.

In Coleman v. White, 14 Wis. 762, the statute imposed an individual liability equal to the face value of the stock.

The court said, "The remedy should be by suit in equity, in which all the creditors should join or one or more should sue for the benefit of all, and that the action should be against the bank and all the stockholders, unless it is impossible or impracticable to bring them all before the court, or some other cause for the omission be shown. From
the nature of the obligation imposed, it being a liability on the part of all the stockholders in proportion to the amount of their respective shares, to all the creditors in proportion to the sums due them. It is an indebtedness which a court of law has no power to regulate and adjust and to which the jurisdiction and powers of equity are peculiarly and exclusively adapted."

Terry v. Little, 101 U. S. 216. When a bank charter provides that on the failure of the bank each stockholder shall be liable for any sum not exceeding twice the amount of his shares. It was held, "a suit at law by one creditor to recover for himself alone is entirely inconsistent with any idea of distribution, as the liability of the stockholder is not to any individual creditor but for contribution to a fund out of which all creditors are to be paid alike, the appropriate remedy is by suit in equity to enforce the con-
tribution, and not by one creditor alone to appropriate to
his own use that which belongs to others equally with himself.
Pollard v. Baily, 20 Wall. 520, is to the same effect.

In Marshall v. Sherman, 148 N. Y. 9, the court said.
"A suit at law by one creditor to recover for himself alone
is entirely inconsistent with any idea of contribution. The
liability is not to any individual creditor but for contribu-
tion to the fund out of which all creditors are to be paid
alike. Hence the appropriate remedy is by suit in equity to
enforce the contribution and not by one creditor alone to
appropriate to his own use that which belongs to others e-
qually with himself."

Wyatt v. Moorehead, 4 Oh. N. P. 435. This action was
brought by a creditor of a Kansas Bank, against defendant,
a stockholder, to enforce the individual liability imposed by
the Kansas statute. Held, the stockholders of this Kansas
bank are not equitably liable for any greater sum than may be necessary to discharge the debts after all of the property of the bank has been applied. The liability of a stockholder is not to any individual creditor but to contribute to a fund out of which all creditors are to be paid alike. Plaintiff does not claim that the defendant is equitably liable for the full amount of stock owned by him but bases his action upon the remedy provided by the law of the corporation's domicile.

Until in the proper proceedings the relation of the bank and its creditors and stockholders has been determined and the amount which each solvent stockholder should contribute has been determined, plaintiff ought not to be permitted to enforce the remedy provided by the Kansas statute. The remedy sought to be enforced is inconsistent and at variance with the mode of procedure here. It is inequitable. It is contrary to the spirit and laws of this state that a single creditor
acquire any priority over the creditors in enforcing the statutory liability of stockholders. The law of comity does not require the enforcement of this liability according to the special remedy provided by the law of Kansas when it clashes with the rights of our own citizens and the policy of our laws.

In Patterson v. Lynde, 112 Ill. 196, it was held that to enforce the liability of the stockholder for his unpaid stock, it is indispensable that the corporation should be before the court so as to be bound by its decrees and orders and so that complete justice may be meted out to all and all competing rights and equities finally adjusted.

So it will be seen that equity is the most usual and in some instances the exclusive remedy for the purpose of enforcing the statutory liability.

As to the priority among creditors, in the action at law
the vigilant gets priority but in the equitable remedy there is no priority, but all share alike.

The remedy in equity while the favorite one with the courts amounts in the cases under discussion to practically refusing any remedy at all, because of the practical impossibility of getting jurisdiction of the corporation and all of the stockholders which make the necessary parties.

Of the remedy it may be finally said, that it is determined largely by the wording of the statute and what was the apparent intent of the legislators, but it seems by the diversity of opinion among the courts that this is a very uncertain guide.

CHAPTER V.

5. Special Statutes of New York and New Jersey.

As to the extraterritorial effect of these statutes imposing an individual liability, there has not, until recently,
been any legislation. But the year 1897 brought forth a statute of New York making stockholders of foreign corpora-
tions liable in the same manner as the stockholders of domestic corporations, and in return New Jersey refuses to give any force to the laws of other states imposing a personal lia-
bility. The tendency is to make New Jersey a favorite asylum for the corporation and New York a state to be shunned by them.

The laws are as follows:

"Liability of officers, directors and stockholders of foreign corporations. — Except as otherwise provided in this chapter the officers, directors and stockholders of a foreign stock corporation transacting business in this state, except monied and railroad corporations, shall be liable under the provisions of this chapter in the same manner and to the same extent as the officers, directors and stockholders of a
domestic corporation for:—

1. Making of unauthorized dividends.

2. Creation of unauthorized and excessive indebtedness.

3. Unlawful loans to stockholders.

4. Making false certificates, reports or public notices.

5. An illegal transfer of the stock and property of such corporation when it is insolvent, or its insolvency is threatened.

6. Failure to file an annual report.

Such liability may be enforced in the courts of this state in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations." Chap. 384 sec. 60, Laws of New York, 1897.

"1. No action or proceeding shall be maintained in any court of this state against any stockholder, officer or director of any domestic corporation for the purpose of enforce-
ing any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign corporation.

2. No action or proceeding shall be maintained in any court of law of this state against any stockholder, officer or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country, and no pending or future
action or proceeding to enforce any such statutory personal liabilty shall be maintained in any court of this state other than in the nature of an equitable accounting for the proportional benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties." Chap. 50, Laws of New Jersey, 1897.
APPENDIX.

A brief summary of the Statutes of the States imposing an Individual Liability upon the Stockholders.
In the following states there is no individual liability imposed upon the stockholder above the unpaid amount on his capital stock: ALABAMA, ARKANSAS, COLORADO, DELAWARE, FLORIDA, IDAHO, ILLINOIS, LOUISIANA, MAINE, MARYLAND, MISSISSIPPI, MISSOURI, NEVADA, NEW MEXICO, NORTH CAROLINA, OKLAHOMA TERRITORY, OREGON, TEXAS, UTAH, VIRGINIA, WASHINGTON, WISCONSIN, and WYOMING.

ARIZONA.—Stockholders are liable for the debts of the corporation in the same proportion which their stock bears to the whole capital stock, unless in the original articles of incorporation it is expressly stated that private property is to be exempt from corporate debts.

CALIFORNIA.—Each stockholder is individually and personally liable for such proportion of all the corporate debts that are contracted and incurred during the time he is a stockholder, as the amount of stock owned by him bears to the
whole of the stock of the corporation.

**CONNECTICUT.**—No individual liability except for unpaid part of capital stock, except in telephone, electric light, electric power and telegraph companies, stockholders are jointly and severally liable for the corporation's debts contracted while they are stockholders, up to 25 per cent of the stock held by them.

**DISTRICT of COLUMBIA.**—Stockholders in a corporation before the capital stock is fully paid in are severally and individually liable to the creditors of the corporation for all debts and contracts made by the corporation to an amount equal to the amount of stock held by them respectively. They are also jointly, severally and individually liable for debts owing to laborers, servants and apprentices for services performed for the corporation. After the corporate stock is paid in they are individually liable for all debts of the
corporation to the amount of the stock held by each one.

GEORGIA.- Stockholders individually liable only for amount unpaid upon capital stock, unless expressly made liable by the charter of the corporation.

INDIANA.- Stockholders in manufacturing corporations are individually liable for the payment of mechanics, laborers, etc. in addition to the payment in full for their capital stock. In all other cases there is no individual liability other than for the amount unpaid on their capital stock.

INDIAN TERRITORY.- No local laws governing corporations.

IOWA.- The stockholder is liable for the debts of the corporation in any event unless the charter expressly provides that he is not; and if it does so provide, the stockholder is liable to the amount of his unpaid subscription.

KANSAS.- The original subscriber to stock remains liable for debts of the corporation to the extent of the amount that
may be unpaid on the stock subscribed by him, although the stock has been assigned to another party. The stockholder is liable for the debts of the corporation to the extent of double the amount of the stock subscribed. This applies to all corporations except religious and charitable. The liability can be enforced by summary proceedings.

**KENTUCKY.**—Stockholders are liable to the creditors for unpaid part of stock subscribed, and also individually responsible, equally and ratably, and not one for the other, for all contracts and liabilities of such corporation to the extent of the amount of their stock at par value, in addition to the face value of their stock. This double liability does not extend to stockholders of educational, benevolent, religious or charitable corporations, or corporations organized for the purpose of building or operating turnpikes, bridges, lines of railroad, telegraph or telephone lines, developing
or improving land, mines or waterways, or constructing or
operating gas or electric plants, or operating for petroleum,
natural gas or salt water.

**MASSACHUSETTS.**—Stockholders shall be jointly and severally liable for the debts of the corporation in the following cases: 1. For such debts as may be contracted before the capital stock is fully paid in, but only those who have not paid in full shall be liable. 2. For the payment of all debts existing at the time when the capital is reduced, to the extent of the sums withdrawn and paid to the stockholders. 3. For all sums of money due to operatives for services, within a certain time. 4. When special stock is created the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed.

**MICHIGAN.**—Same as Massachusetts (2), and also the stockholders are individually liable for all labor performed
for the corporation.

**MINNESOTA.**—Every stockholder in any corporation (excluding those formed for the purpose of carrying on any manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him.

The private property of each stockholder is liable for corporate debts: 1. For all unpaid installments of stock owned by him or transferred for the purpose of defrauding creditors. 2. For failure of corporation to comply with the provisions of organization. 3. Where he personally violates any provisions of the statute in the transaction of any business of the corporation or is guilty of any fraud.

**MONTANA.**—The stockholders are individually liable for the amount unpaid on their capital stock, and also for debts due and owing to laborers, servants and employees of any class of corporation.
NEBRASKA.—Stockholders are individually liable for the amount unpaid on the capital stock, and if the corporation fails to publish annual notices of all existing debts, after the assets are exhausted the stockholders are jointly and severally liable for all debts existing to an amount equal to the unpaid capital stock and an additional amount equal to the face value of the stock owned by him.

New Hampshire.—Every stockholder shall be liable individually for all debts and contracts of the corporation until the whole amount of the capital fixed and limited by the corporation shall have been paid in and a certificate thereof filed.

New Jersey.—Stockholders are liable to creditors to the amount of their unpaid subscription to stock and also to the extent of such sum of money as may be received when the capital stock has been reduced without proper notice having been
given

**NEW YORK.**—Stockholders of a stock corporation are jointly and severally liable to its creditors to an amount equal to the amount of stock held by them respectively for every debt of the corporation until the whole amount of its capital stock outstanding at the time such debt was incurred has been fully paid. This makes the stockholder, holding stock fully paid in, liable as well as the one holding stock not fully paid until the prescribed condition is complied with. The stockholders of stock corporations are jointly and severally personally liable for all debts due and owing to any of its laborers, servants and employees, other than contractors, for services performed by them for the corporation.

**NORTH DAKOTA.**—Each stockholder is individually liable to creditors of the corporation for the amount unpaid on his capital stock. In manufacturing and mining corporations
stockholders are jointly and severally liable for all debts due to mechanics, workmen and laborers employed by such corporation.

OHIO.—Stockholders are liable in double the amount of stock subscribed or owned by him.

PENNSYLVANIA.—Stockholders are generally liable individually to the amount of stock held by each for all work or labor done on the operations of the corporation.

In banking corporations they are individually liable to creditors to an amount equal to the face value of their stock in addition to the value of their shares. In some classes of corporations they are liable to the excess of the indebtedness over the amount of the capital stock.

RHODE ISLAND.—Stockholders are jointly and severally liable for all debts of the corporation until the capital stock is all paid in and a certificate filed to that effect.
If any of the capital is withdrawn before the payment of all the debts, then the stockholders are jointly and severally liable for the payment of such debts. The liability of the stockholders is limited to the par value of the stock and an additional amount equal thereto for not paying up the capital stock, and to an additional and equal amount for not filing the annual report.

**SOUTH CAROLINA.**—Stockholders are liable for the amount unpaid on their capital stock, and in banking corporations they are liable for an additional amount equal to the face value of their capital stock to creditors of the corporation.

**SOUTH DAKOTA.**—Stockholders are individually liable for the unpaid amount of capital stock, and in mining and manufacturing and other industrial corporations for wages to mechanics, workmen and employees.

**TENNESSEE.**—Substantially the same as South Dakota.
VERMONT.- Stockholders are individually liable to the amount unpaid on capital stock and if part of the capital stock is withdrawn or refunded stockholders are liable for the debts existing at that time to the amount withdrawn or refunded.

WEST VIRGINIA.- The stockholders are liable to the amount unpaid on the capital stock and a double liability in banking corporations.