

PEOPLE *EX REL.* FIELD *V.* NORTHERN PAC. R.
CO.

N. Y. Superior Court.

Application for a *mandamus* to compel the respondents, the Northern Pacific Railroad Company, "to exhibit to the relator the transfer-books of the preferred stock of said company, or other books containing the names and addresses of the holders of the preferred stock of said company; and to permit said relator, his attorney or clerks, to take therefrom the names and addresses of the registered holders of said preferred stock."

Thomas Henry Edsall and *E. Ellery Anderson*, for relators.

Artemas H. Holmes and *William M. Evarts*, for respondents.

INGRAHAM, J. In determining this question I shall not attempt to do more than to give the conclusions at which I have arrived, as I think it important to the parties in interest that the motion should be decided at once. The respondent is a corporation created by an act of congress, and is the owner and operates a railroad running through several states and territories, and has an ⁴⁷² office in the City of New York. The plaintiff is the holder of 200 shares of the preferred stock and 500 shares of the common stock of said corporation, and as such requested the officers of said corporation in charge of the transfer-books of said stock to allow him to examine such transfer stock-books, but said officers refused to allow such an examination. The relator, therefore, asks for a peremptory writ of *viandamus*, requiring said company to permit such examination.

The most serious objection made by the respondent is that the courts of this state have no power to

interfere or control by *mandamus* a foreign corporation, or a corporation created by or existing under laws of any state, except the state of the tribunal whose interference is asked. The relator does not claim that there is any express provision of statute that authorizes the writ asked for, but insists that by common law the court has power, when necessary for the purpose of preserving the rights and interest of stockholders, to interfere by *mandamus* and compel the exhibition of such books. It will be noticed that this is not an action, and therefore section 1708 of the Code, and the decisions to which I have been referred under that section, do not apply. That the legislature could constitutionally authorize the courts of this state to exercise such power over all corporations, bringing them and their property within their jurisdiction, cannot, I think, be doubted; but no such authority had been given.

Chapter 165 of the Laws of 1842 provides that the transfer agents in this state of any corporation existing beyond the jurisdiction of this state shall, at all reasonable times, exhibit to any stockholder when required by him such books; and then provides a penalty for each refusal to comply with the statute. It is not claimed by relator that this application can be sustained by this statute; it applies only to transfer agents and not to the corporation. Any proceeding under that statute must be taken against the transfer agents, and not against the company. *People v. L. S. & M. S. R. Co.* 11 Hun, 1. To sustain the power of the courts of this state to grant this application, it must therefore appear that a court of equity has power to control, by its process, the corporate action of a foreign corporation. This power, it would appear, the legislature of this state has given to the courts when a cause of action exists in favor of the resident of this state against such a corporation, (Code, § 1708;) but no statute to which I have been referred, or which, in the

limited time I have had to devote to the examination of this question, have I been able to find, has given such a power to the courts of this state to proceed by special proceedings, or in any other way, except by action.

An application for a *mandamus* is a special proceeding. An action must be commenced by the service of a summons. Code, § 416. The only case to which I have been referred on this question is the case of *People v. Parker Vein Coal Co.* 10 How. Pr. 548, where Judge Mitchell, on delivering one of the opinions, holds that a *mandamus* cannot issue against a foreign corporation except it violates a law of this state, and while it does not violate any law of any state the state should not interfere with it.

The case of *People v. L. S. & M. S. R. Co.*, *supra*, holds that proceedings for a writ of *mandamus* to compel the exhibition of transfer-books of a foreign corporation can be taken against a transfer agent only.

The passage of the act of 1842 would not have been necessary if the courts of this state had the power claimed, as the transfer agents, being the agents of the corporation, could have been compelled to exhibit the transfer-books of the corporations themselves, and were subject to such control. But if the court had the power to grant the relief asked, I do not think, under the circumstances in this case, the application should be granted. The application “is addressed to the sound discretion of the court,” and should be exercised with great discrimination and care. “The courts should guard against all attempts, ⁴⁷³ by combinations hostile to the corporation or its existing officers, to use its writ of *mandamus* to accomplish their personal or speculative ends.” *People v. L. S. & M. S. R.*, *supra*.

In this case it is alleged by the respondent, and not denied by the relator, that the stock owned by the relator was transferred to him long after the resolution of the board of directors of said corporation

authorizing the execution of the mortgage which the relator opposes, and to which opposition the inspection is sought, and the circular asking the consent of the stockholders has been issued.

Under such circumstances, I think before the court should grant such a writ as is here applied for, it was incumbent on the relator to show that he was a *bona fide* holder of the stock that he sought to protect before the action of the directors of said company, and that this is but an attempt to use the writ of *mandamus* to accomplish personal or speculative ends.

The relator must show affirmatively all the facts to entitle him to such writ, and under the facts as they appear on this application I am of opinion that the application should be denied.

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