

GLOBE ROLLING-MILL CO. *V.* BALLOU *ET AL.*

*Circuit Court, S. D. New York.*

May 5, 1890.

CREDITORS—BILL—CORPORATION—JURISDICTION.

Judgment against an insolvent corporation in the state of its organization, and return of execution unsatisfied, will not authorize a bill by the judgment creditor in another state, where no judgment has been recovered against it, to enforce payment of a subscription to its stock.

In Equity. On demurrer.

*J. D. Brannon*, for plaintiff.

*Thomas Thacher*, for defendants.

SHIPMAN, J. This is a demurrer to the plaintiff's bill in equity. The bill alleges that the defendant subscribed to the capital stock of an Ohio railroad corporation, which subscriptions were never paid, and that he

is still liable there on; that the corporation became insolvent; and that the plaintiff, one of its creditors, recovered judgment against it in an Ohio state court, upon which judgment execution was returned unsatisfied. The complainant now seeks, by this bill, in behalf of itself and the other creditors, to compel payment by the defendant of the amount of said subscription to the capital stock. No judgment has been recovered against the railroad corporation in the state of New York. In the three cases of *Claffin v. McDermott*, 12 Fed. Rep. 375; *Walser v. Seligman*, 13 Fed. Rep. 415; and *National Tube-Works Co. v. Ballou*, ante, 749,—Judge WALLACE held that a creditors' bill in this court could not be sustained which was based only upon a judgment obtained against his debtor in a state court at the place of his domicile, in another state, and upon an unsatisfied execution issuing out of that court, no judgment having been recovered in this state. No distinction of importance is perceived, and none has been pointed out, between the last two cases and this case. The bill does not seem to be authorized by any statute which permits the liability to be enforced by an immediate resort to a court of equity in case of the insolvency of the corporation. In the *Tube-Works Co. Case* the judge says that he doubts whether a too technical view has not been adopted in the preceding cases, and hopes that the last case may be taken to the supreme court for review, which has been done. Unless a valid distinction can be shown between the case at bar and the preceding cases, the demurrer must be sustained, in the present state of the decisions in this circuit. The demurrer is sustained.