receive the legal title to the lands prior to the commencement of this action to prevent the plaintiff from maintaining this action either upon the statute of limitations or the claim of laches.

I am not unmindful of the contention by defendants that these lands were embraced in the mortgage of June 2, 1862, made by the St. Paul & Pacific Company, the mortgage of October 1, 1865, made by the First Division of the St. Paul & Pacific Company, and the mortgage of April 1, 1871, made by the St. Paul & Pacific Company, and that upon the foreclosure of said mortgages all of the lands embraced therein were purchased by the defendant company, and that for that reason the defendants' right to them has been secured. Upon the view that I have of these mortgages as construed in the light of the various acts herein referred to, these lands were not embraced in the mortgages referred to. They were not put in the deeds by any description as to section, township, or range, and the only language that purports to convey them at all by the mortgages is the expression, "lands appertaining to the roads." So, if those lands from Watab to Brainerd did not appertain to the road constructed by the mortgagors, then it must be that they were not embraced in the mortgages, and did not pass to any one by foreclosure or sale thereunder. The act of congress granting these lands was both a grant and a law. Inasmuch as it was plainly stated in the act that these lands were only to inure to the company or party who actually constructed the road adjacent to them, if at that time such road had not been constructed, that grant, which was also a law, was a notice to all persons that the mortgagor had no right or title to those lands. So, in my judgment, that contention of the defendant must fail.

Entertaining these views, I am of the opinion that the complainant is entitled to recover as prayed for in the bill of complaint, and to have conveyed to it all lands mentioned in the complaint lying north of Watab that are coterminous with the line of said railroad extending north from Watab to Brainerd, and that its title be quieted to those lands, and all clouds removed that now may exist upon its title to the same.

MINNEAPOLIS, ST. P. & S. S. M. RY. CO. v. MILNER et al.

(Circuit Court, W. D. Michigan, N. D. July 29, 1893.)

1. CONSTITUTIONAL LAW — REGULATION OF COMMERCE — STATE QUARANTINE LAWS.
   The detention and disinfection of immigrants by order of a state board of health, with the purpose of preventing infectious disease, is not a regulation of foreign commerce by a state, within the meaning of the prohibition in Const. U. S. art. 1, § 8. Brown v. Maryland, 12 Wheat. 419, followed.

2. SAME—TREATIES.
   The right of the several states to establish and enforce quarantine regulations is not limited by any existing treaty between the United States and Norway and Sweden.

8. SAME—CRIMINAL PROSECUTION—INJUNCTION.
A federal court has no power to restrain by injunction a criminal prosecution by a state under an unconstitutional statute of such state.

4. SAME—QUARANTINE REGULATIONS.
In enforcing its quarantine regulations a state may detain immigrants from noninfected places who have traveled with others from infected localities.

5. SAME—DETAINING PERSONS PASSED BY FEDERAL OFFICERS.
The enforcement of the quarantine regulations of a state against immigrants cannot be restrained by injunction in a federal court, although the persons detained thereunder have been examined and passed by federal health officers.

6. SAME—COSTS OF INSPECTION.
The costs and charges of quarantine inspection under state laws may lawfully be imposed upon the carrier which brings the suspected passengers into the country, as being incident to the business in which it is engaged.

In Equity. Bill by the Minneapolis, St. Paul & Sault Ste. Marie Railway Company against Samuel G. Milner and others, constituting the Michigan state board of health, to restrain respondents from enforcing the state quarantine regulations. On motion for preliminary injunction. Denied.

E. C. Chapin and John D. Conley, for plaintiff.

A. A. Ellis, for defendants.

Before SEVERENS and SAGE, District Judges.

PER CURIAM. The bill sets forth that the complainant, a corporation of the state of Michigan, is, and has been for several years past, engaged, under a traffic arrangement with the Canadian Pacific Railway Company, in the transportation of passengers, on through tickets from Quebec, westward through Canada and over the line of the complainant's railway to and through the states of Michigan, Wisconsin, Minnesota, and North Dakota; also eastward from those states through Canada to Quebec; a large portion of the passengers westward being persons traveling from Norway and Sweden to points in said states.

The defendants, it is averred, constitute the state board of health of Michigan, assuming to exercise authority under an act passed by the legislature of said state, and approved June 20, 1885, entitled "An act to provide for the prevention of the introduction and spread of cholera and 'other dangerous communicable diseases,' as amended by 'An act approved April 26th, 1893.'" The bill has attached to it as exhibits a copy of each of said acts, and of certain rules adopted by the board, purported to be issued under and by virtue of the authority conferred by the amendatory act. It is further averred that the board, acting through its secretary and one of its inspectors, and in pursuance of said rules, is daily detaining and attempting to detain passengers on the Canadian Pacific Railway at the point opposite Sault Ste. Marie, Mich., and prohibiting their entering the state of Michigan until they have undergone the quarantine detention; and until the disinfection of their baggage as prescribed in said rules. It is averred that this deten-

tion, examination, and process of disinfection of baggage is applied to all emigrants, irrespective of whether they came from an infected or healthy locality abroad, and without regard to their point of destination. It is further averred that all said emigrants and travelers have been, before said detention, inspected by United States officials detailed for the purpose, and that complainant has not received nor permitted to be conveyed within the state of Michigan any passenger, traveler, or emigrant coming from any European port through the dominion of Canada, excepting such as have presented a certificate of inspection of the United States inspector. It is also averred that the board is threatening to arrest officials and employes of complainant unless complainant shall submit to and comply with the requirements of the board.

The claim is that the rules and action of the board of health are in direct violation of section 8, art. 1, of the constitution of the United States, in that they attempt to regulate and prohibit commerce with foreign nations; and that they are also in violation of the treaty made by and between the United States and Norway and Sweden, and now existing; also that they are over, above, and beyond the powers conferred upon the board by said act and amendatory act of the legislature of Michigan. The bill then sets forth averments of irreparable damages, and prays for an injunction.

The motion for a preliminary injunction will be overruled for the following reasons:

1. In Brown v. Maryland, 13 Wheat. 419–433, Chief Justice Marshall recognized that the removal or destruction of infectious or unsound articles was undoubtedly an exercise of the police power of the state, and an exception to the prohibition resulting from the exclusive power of congress to regulate the operations of foreign and interstate commerce; and that laws of the United States expressly sanction the health laws of the several states. In the License Cases, 5 How. 504, 576, Chief Justice Taney declared that "it must be remembered that disease, pestilence, and pauperism are not subjects of commerce, although sometimes among the attendant evils. They are not things to be regulated and trafficked in, but to be prevented as far as human foresight or human means can guard against them." In Crutcher v. Kentucky, 141 U. S. 47, 11 Sup. Ct. Rep. 851, Justice Bradley referred to these cases with approval, and stated with great clearness and force the distinction between the exercise of its police power by a state and an attempt to legislate upon matters of interstate or foreign commerce, which are exclusively within the power of the federal government. These authorities render it unnecessary to refer particularly to the cases cited for the complainant. It is sufficient to say that they all relate to state enactments concerning articles of commerce, and hence are not applicable here. Moreover, the quarantine act of congress, approved February 15, 1893, expressly recognizes the validity of state laws, and in section 3 requires the supervising surgeon general of the marine hospital service to co-operate with

and aid state and municipal boards of health in the execution and enforcement of their rules and regulations.

2. We find nothing in any existing treaty with Norway and Sweden in conflict with the institution or enforcement by any one or more of the states of this Union of quarantine regulations.

3. We do not deem it necessary to express an opinion whether the provision of the Michigan statute making it a misdemeanor to violate the rules of the state board of health, adopted in pursuance of the act, is in conflict with the constitution of Michigan, for we should not, even if we were of opinion that it is unconstitutional, undertake to issue an injunction against criminal prosecution by the state. That the legislature might authorize the board to adopt rules is, we think, beyond question. Such rules are essential to the proper enforcement of the law.

4. To the objection that passengers from noninfected countries and localities are detained, the answer is that such detentions are, in the nature of the case, to a certain extent unavoidable; and passengers from such countries and localities may have become properly subject to detention by reason of having mingled with others who could communicate pestilence or disease to which they themselves had been exposed or subjected. An opportunity for examination and inspection is indispensable also.

5. The objection that passengers who had certificates from United States inspectors were detained is not tenable. The states may exercise their police power according to their own discretion, and by means of their own officials and methods. The inconvenience resulting to emigrants and travelers from being halted and subjected to examination and detention at state lines is of trifling importance at a time when every effort is required and is being put forth to prevent the introduction and spread of pestilential and communicable diseases.

The costs and charges which are incurred in such quarantine inspection may lawfully be imposed on the railway company as being incident to the business in which it is engaged. The costs of the motion will be taxed to the complainant.

BANK OF NORTH AMERICA v. RINDGE.

(Circuit Court, S. D. California. August 7, 1893.)

1. CORPORATIONS—STOCKHOLDERS—LIABILITY FOR CORPORATE DEBTS — ACTION TO ENFORCE—KANSAS STATUTE.
   Under Gen. St. Kan. 1889, p. 381, par. 1192, providing for the enforcement of the liability of stockholders of a corporation for the corporate debts, the creditor may either proceed summarily in the court where judgment has been given against the corporation and execution returned nulla bona, or he may proceed by an ordinary action at law wherever personal jurisdiction of such stockholder can be acquired. Howell v. Manglesdorf, 5 Pac. Rep. 759, 33 Kan. 194, followed.

2. SAME—LIMITATIONS—WHEN BEGINS TO RUN.
   The statute of limitations does not begin to run in bar of an action to enforce such liability until judgment has been given against the corporation, and execution thereon has been returned unsatisfied.

3. SAME—PLEADING—ALLEGATION OF DEFENDANT'S OWNERSHIP.
In such an action an allegation that plaintiff "is informed and believes" that defendant is a stockholder is insufficient. The fact of defendant's ownership of stock should be directly charged either upon information and belief or otherwise.

At Law. Action by the Bank of North America against Frederick K. Rindge to enforce the latter's liability as stockholder of the Haddam State Bank. Heard on demurrer to the complaint. Demurrer sustained.

Wells, Monroe & Lee, for plaintiff.
S. C. Hubbell, for defendant.

ROSS, District Judge. This is an action at law by a creditor of a Kansas banking corporation against the defendant, as a stockholder in that corporation, to enforce the liability which the statutes of Kansas impose upon stockholders in corporations, other than railway, religious, or charitable corporations, for the corporate debts.

The statute of Kansas, which is the foundation of the action, is as follows:

"If any execution shall have been issued against the property or effects of a corporation, except a railway or a 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 of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open court, after reasonable notice in writing to the person or persons sought 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." Gen. St. 1889, p. 381, par. 1192.

The complaint, to which a demurrer is interposed, alleges that on the 2d day of January, 1889, the plaintiff recovered a judgment in the United States circuit court for the district of Kansas, in an action therein commenced on the 8th day of September, 1888, against George S. Elwood, John T. Elwood, and the Haddam State Bank, for the sum of $5,343, with interest thereon at the rate of 12 per cent. per annum from the date of judgment, together with the costs of the plaintiff therein expended, amounting to the sum of $34.25; that no part of the judgment, costs, or interest has been paid; that on the 21st of February, 1893, the plaintiff caused an execution to be issued out of the court in which the judgment was obtained to the United States marshal for the district of Kansas, which execution the marshal thereafter, in due time, returned nulla bona; that the Haddam State Bank was at the date of the rendition of the judgment, and had been for a long time prior thereto, and ever since has been, a corporation duly organized and existing under the laws of the state of Kansas; that plaintiff "is

informed and believes that the defendant herein was on the said 8th day of September, 1888, had been long prior to that time, has been ever since said date, and now is, the owner of the capital stock of said Haddam State Bank to the amount of $5,000 in the par value of said stock, and that the entire amount due upon said stock, except about the sum of $1,000, remains unpaid;" that the defendant has never paid any portion of his individual liability upon his stock to the plaintiff or to any other creditor of the bank; that the plaintiff has never enforced its judgment against the bank, against the defendant, or against any other of its stockholders, and has now no other action pending therefor.

The present action was commenced March 6, 1893.

The principal objections urged on the part of the defendant to the complaint are—First, that the remedy of the plaintiff, if any, is by suit in equity; and, second, that the action is barred by those provisions of the statute of limitations of California prescribing three years as the period for the commencement of an action upon a liability created by statute other than a penalty or forfeiture, and two years for the commencement of an action upon a contract, obligation, or liability not founded upon an instrument of writing, or founded upon an instrument of writing executed out of the state. Code Civil Proc. Cal. §§ 338, 339.

It is well settled that the individual liability of stockholders in a corporation for the payment of its debts is always a creature of statute, and must be measured by the statute of the state which creates the corporation and imposes the liability; and, further, that, where the statutes of the state creating the corporation and imposing the liability provide a special remedy, the liability of a stockholder can be enforced in no other manner in a court of the United States. Bank v. Francklyn, 120 U. S. 747, 7 Sup. Ct. Rep. 757, and cases there cited.

The statute of Kansas in question was construed by the supreme court of that state in the case of Howell v. Manglesdorf, 33 Kan. 194, 5 Pac. Rep. 759. After setting out the statute already quoted, the court said:

"It will be observed that two remedies for enforcing the individual liability of stockholders are prescribed in the statute above quoted. In the one case the judgment creditor of an insolvent corporation may proceed by a summary action on a motion in the court where the judgment was rendered against the corporation; in the other, by an ordinary action to be instituted wherever personal jurisdiction of the stockholders can be acquired. Before the summary proceeding by motion can be maintained, notice to the stockholder must be given, in order that he may appear and make such defense as can be made, and as is necessary to protect his interest. The statute does not define the form of the notice nor the time nor place of its service, but only prescribes that a 'reasonable notice in writing' shall be given to the person sought to be charged. Whether the notice given in this case is sufficient, and what constitutes a reasonable notice under this statute, must depend very largely upon the nature of the proceeding based upon the notice. While the proceeding is summary in its character, and its maintenance contingent upon the insolvency of the corporation, or upon the rendition of a judgment against the corporation, and the return of an execution thereon of nulla bona, yet we cannot regard it as an interlocutory or auxiliary proceeding in the action against the corporation. In the action against the corporation no notice

of its pendency is given to the stockholder. He is not directly interested in the action, as his liability is only secondary to the corporation, and exists alone by reason of this statutory provision, and of that provision of the constitution in pursuance of which the statute is enacted. Const. art. 12, § 2. His liability to the creditors of the corporation is in the nature of a guaranty. The action or proceeding to enforce the same does not accrue until the execution upon the judgment against the principal is returned unsatisfied. We think that the proceeding against the stockholder, whatever remedy may be employed, is an independent one. It will readily be conceded, if the proceeding is distinct and independent, and the issues between the parties are personal, and if the consequence of the proceeding is in the nature of a judgment in personam, that the notice or process of the court upon which the jurisdiction depends cannot be served beyond the jurisdiction of the state. Before either of the remedies pointed out by the statute can be employed by the creditors, the stockholder must be brought into court, and have his day there. He is not concluded by the judgment against the corporation. That judgment is at most only prima facie evidence of his liability. Grund v. Tucker, 5 Kan. 70. When he is brought into court in this proceeding, he may interpose several defenses. Among other things, he may show that he is not a stockholder; or, if he had subscribed to the capital stock of the company, it had been forfeited or released, or it had been sold and transferred, and the liability sought to be enforced against him had been assumed and succeeded to by another; or he may show that the judgment is void. He may also set up as a defense that he is discharged by having already paid the amount of his individual liability to other creditors of the corporation. We think he may contest his liability in this proceeding to the same extent, and may interpose the same defenses, that he could have availed himself of if the creditor had chosen the second remedy prescribed by the statute, and proceeded in an ordinary action to obtain a judgment."

The construction of the Kansas statute by the highest court of that state is binding on this court. That is the general rule in respect to the construction of state statutes and constitutions. Any other rule in cases like the present might subject stockholders residing out of the state to a greater or less burden than domestic stockholders, depending upon the various interpretations that might be given the state statute by different courts.

As will have been observed, the Kansas statute upon which the suit is based, as construed by the supreme court of that state, provides two remedies for enforcing the individual liability of stockholders, one of which is by an ordinary action at law, to be instituted wherever personal jurisdiction of them can be acquired. That remedy is pursued in the present action, and is therefore a proper remedy.

It was further held in the case of Howell v. Manglesdorf, as will be seen from the quotation made, that the liability of the stockholders to the creditors of the corporation under the statute in question is in the nature of a guaranty, and that the action or proceeding to enforce the same does not accrue until the execution upon the judgment against the principal is returned unsatisfied. The precise date when the execution upon the judgment obtained in Kansas was returned unsatisfied does not appear from the complaint, but it does appear therefrom that the execution was not issued until the 21st day of February, 1893, and that it was thereafter returned in due time nulla bona. The cause of action could not therefore be barred by either of the statutes of limitation of California relied on by the defendant.

The allegations of the complaint are, however, plainly insufficient to show that the defendant ever was the owner of any of the stock of the Haddam State Bank. The allegation is that plaintiff "is informed and believes" that defendant is, and was at the times mentioned, such owner. This is only an allegation in respect to the plaintiff's information and belief. The fact of the defendant's ownership of the stock is not charged, either upon information and belief or otherwise. This objection, however, is but technical, and can be easily remedied by amendment.

Demurrer sustained, with leave to the plaintiff to amend within the usual time.

MASE v. NORTHERN PAC. R. CO.

(Circuit Court, D. Minnesota, Third Division. August 21, 1893.)

MASTER AND SERVANT—WHO IS A VICE PRINCIPAL—RAILROAD CONDUCTOR.

Rules of a railroad company imposing upon its conductors the care and management of switches used by them, and charging them with the responsibility of their proper handling and position while in such use, are such a delegation by the company of the duty which it owes to its employes as will render a conductor, in that connection, a vice principal; so as to charge the company with liability for the death of an engineer killed by reason of his engine running into an occupied side track, through a switch negligently left open and unguarded by the conductor of another train.

At Law. Action by Clara Mase, as administratrix of Frank B. Mase, deceased, against the Northern Pacific Railroad Company, to recover for the death of her intestate. Judgment for plaintiff on a case submitted upon an agreed statement of facts.

Erwin & Wellington, for plaintiff.

John C. Bullitt, Jr., and T. R. Selmes, for defendant.

WILLIAMS, District Judge. This case is submitted upon the following agreed statement of facts:

"That the plaintiff is the duly-appointed and legally-qualified administratrix of the estate of Frank B. Mase, deceased, and is the widow of said deceased; that, at all times hereinafter mentioned, plaintiff's intestate, Frank B. Mase, was in the employ of the defendant as an engineer on one of its passenger trains, and was, on the 3d day of October, 1890, engaged as such engineer upon the engine of a certain train, mentioned and referred to in the testimony hereto annexed as passenger train No. 2; that on said 3d day of October, 1890, while so engaged in the performance of his duties as such engineer upon said train, said Frank B. Mase was killed in an accident occurring at or near Butler, in the state of Montana, caused by said train on which plaintiff's intestate was so employed running upon a certain side track or safety track, by reason of a misplaced switch, and thus colliding with certain cars and a certain engine, mentioned as engine No. 483, which stood upon said side track or safety track; that said switch was so misplaced or left open by one E. L. Short, the conductor of the train mentioned as No. 58, of which said engine No. 483 was a part; that the circumstances of said accident are as stated in the testimony of Marshall Nixon, given at the coroner's inquest on the body of said Frank B. Mase, a copy of which is hereto attached, and made a part of this stipulation; that the trains referred to herein or in said testimony were trains owned or controlled by defendant