fully examining the decisions of the highest court of Rhode Island, where the corporation was organized, as to whose capital stock defendant was sought to be held liable, and those from the like court in Massachusetts, from which state the Rhode Island statute was adopted, state that the court has repeatedly held "that whether the remedy in the federal court should be by action at law or by suit in equity depends upon the nature of the remedy given by the statutes of the state"; and the decision reached is largely, if not entirely, governed by the decisions of the Rhode Island court. In Clark v. Bever, supra, the supreme court, while refusing to follow the supreme court of Iowa as to the decision there given (64 Iowa, 469, 20 N. W. 764) on the matter of the liability of a shareholder for unpaid installments or portions of his shares, on the ground that this was a question of general law, as to which the federal courts must follow their own views and constructions, yet the court expressly recognize that the Iowa statute has given a new remedy for enforcement of such liability when that liability exists (page 116):

> The new right given to the creditor by the statute is to have his execution, when corporate property cannot be found, levied upon the private property of the stockholder who is indebted on his subscription of stock.

And had it become material to consider it, undoubtedly, that court would have recognized the remedy by the next section of the state statute,—"an action,"—as the legitimate and proper method of enforcement, as construed by the state court.

In Patterson v. Lynde, supra, in which it was held that the proceeding under the Oregon statute should be by a suit in equity, as one reason therefor the supreme court say, "The creditor has not been given, either by the constitution or the statute, any new remedy for the enforcement of his rights." Well may it be said, as to the remedy to be here pursued, using the language of the supreme court in Flash v. Conn, supra:

> We think this is a case where the construction of the state court is entitled to great, if not conclusive, weight with us. * * * It is clear that confusion and uncertainty would result, should the state and federal courts place different constructions on the section. * * * If this was a case arising in the state of [Iowa,] we should follow the construction put upon the statute by the courts of that state.

And if in matters involving the determination of general principles, how much more when there is involved simply the question of the remedy to be adopted in enforcing a right, is the language of the supreme court pertinent, that:

> The federal courts administering justice in Iowa, having equal and co-ordinate jurisdiction with the courts of that state, * * * will lean towards an agreement of views with the state court, if the question seem to them balanced with doubt. Clark v. Bever, 139 U. S. 117, 11 Sup. Ct. 468, and cases there cited.

The question heretofore considered does not involve the point whether a state statute may limit the sphere of jurisdiction within which the federal courts exercise their equity powers. Counsel upon either side concede this as settled in the negative by repeated de-

cisions of the supreme court of the United States. But as said in Payne v. Hook, 7 Wall. 425:

> The absence of a complete and adequate remedy at law is the only test of equity jurisdiction, and the application of this principle, as applied to a particular case, must depend on the character of the case, as disclosed in the pleadings.

The first two points above named, of the demurrer, are overruled.

The next ground of demurrer is that no assessment is shown to have been made on defendant's shares. This opinion has already transgressed its proper bounds, and must not be unnecessarily lengthened.

In Clark v. Bever, supra, it is said:

> So, when the interests of creditors require, those who hold shares of stock in a corporation, purporting to be, but which are shown not to be, paid for to their face value, should be held liable to pay their shares in full, unless it appears that they acquired their stock under circumstances that did not give creditors and other stockholders just grounds for complaint.

In Hatch v. Dana, 101 U. S. 214 (creditors' bill to charge stockholders holding unpaid stock), the court say:

> That the appellants [stockholders] are not protected by the fact, if such was the fact, that their subscriptions for stock were payable "as called for by the company," we think, is clear. Assuming that such a clause in the subscription meant more than an agreement to pay on demand, and that it contemplated a formal call upon all the subscribers of a company, the subscriptions were still in the nature of a fund for the payment of the company's debts, and it was the duty of the company to make the calls whenever the funds were needed for such payment. If they were not made the officers of the company violated their trust, held both for the stockholders and the company. And it would seem singular if the stockholders could protect themselves from paying what they owe by setting up the default of their agents.

And it is not perceived why the reasoning of the opinion just given may not here apply.

Singer v. Given, supra, states the doctrine that a subscriber to capital stock "assumes towards the creditors of the corporation an obligation which can be discharged in no other way than by payment of that sum." And in Jackson v. Traer, supra, the court expressly declare that one who accepts and holds stock in a corporation has all the liabilities as to payment thereof which obtained as to the original subscriber. The words "unpaid installments" are used in the statute. But in the various Iowa cases cited by counsel there appears no case wherein the court has not regarded the unpaid amounts on capital stock as bound to a judgment creditor of an insolvent corporation, who attempts to recover under the statute against the holder of such stock.

The remaining ground of demurrer is that the railway company, its creditors, and the other stockholders are necessary parties. In none of the cases above cited from the United States Reports is there any statement or suggestion that in an action at law either the insolvent corporation, its other stockholders, or the other creditors are necessary parties. Manifestly, an attempt wherein there is "the necessity of enforcing a trust, the marshaling of assets, and equalizing contributions" (Manufacturing Co. v. Bradley, supra),

could not be sustained as against one stockholder. Such cases, however, are in equity. All the cases cited on this point by counsel for defendant are suits in equity, and governed by the suggestions just made. The very point of the Iowa statute is to provide a speedy and adequate method to give complete aid to a judgment creditor who pursues a stockholder for the amounts unpaid on his shares. The reasoning of the Iowa supreme court in Stewart v. Lay, supra, as above given, manifests the purpose of the statute. The shareholder has no grounds of complaint that he alone is sued, for his is a several, individual liability. And the very fact that section 1634 entitles him to his separate action against another stockholder for contribution argues strongly against even the right of another stockholder to be joined with him as defendant in this action. He can avoid this statutory proceeding by paying in full his shares. And, since his obligation is alone sought to be enforced by the judgment creditor, he alone is the proper party. The creditor is not attacking the corporation in this action. The corporation has already had its day in court in the matter of the creditor's claim. The corporation is not interested in the attempt of the creditor now to force from the stockholder, under the remedy afforded by the statute, the payment of so much of his unpaid shares as may be necessary to discharge the judgment already obtained against the corporation. "This liability is fixed, and does not depend on the liability of other stockholders. There is no necessity for bringing in other stockholders or creditors. Any creditor who has recovered judgment against the company, and sued out execution thereon, which has been returned unsatisfied, may sue any stockholder, and no other creditor can." Flash v. Conn, supra. This ground of demurrer must be overruled.

Let an order be entered overruling the demurrer, to which defendant excepts. And defendant is given until February 1, 1895, to elect to stand on his demurrer or to answer by that date, as he may be advised.

BALFOUR et al. v. ROGERS et al.

(Circuit Court, D. Oregon. December 17, 1894.)

No. 1,986.

1. EXECUTION SALE—REDEMPTION—MESNE PROFITS—OREGON STATUTE.
The statute of Oregon, relating to execution sales of land, provides that "the purchaser, from the day of sale until resale or a redemption, and the redemptioner, from the day of his redemption until another redemption, shall be entitled to the possession of the property * * *, unless the same be in possession of a tenant * * *, and, in such case, * * * to * * * the rents * * *." 1 Hill's Ann. Laws, § 307. *Held*, that the right to receive rents and profits under this statute does not imply that what is thus received can be retained by the purchaser in case of a redemption, but in all such cases the product of the property must be accounted for to the redemptioner.

2. PLEADING—PRAYER FOR RELIEF.
Where there is no obstruction to the particular relief prayed, the plaintiff cannot abandon that and ask a different decree under the general prayer.