

reached." *Freem. Judgm.* § 498; *Taggart v. Wood*, 20 Iowa, 236; *Gerrish v. Seaton*, 73 Iowa, 15, 34 N. W. 485; *Stokes v. Knarr*, 11 Wis. 389; *Harris v. Gwin*, 10 *Smedes & M.* 563; *Stewart v. Brooks*, 62 Miss. 492; *Secor v. Woodward*, 8 Ala. 500; *Dunklin v. Wilson*, 64 Ala. 162; *State v. Hill*, 50 Ark. 458, 8 S. W. 401, disaffirming *Ryan v. Boyd*, 33 Ark. 778; *Gifford v. Morrison*, 37 Ohio St. 502; *Wilson v. Hawthorne*, 14 Colo. 530, 24 Pac. 548; *Sharp v. Schmidt*, 62 Tex. 263; *Pilger v. Torrence*, 42 Neb. 903, 61 N. W. 99; *Colson v. Leitch*, 110 Ill. 504. No such exception to the general rule appears to have found recognition in the practice of the federal courts, and its incorporation would not harmonize with the principle that equity will not enforce rights upon grounds which are wholly legal or technical, nor "grant an injunction to stay proceedings at law merely on account of any defect of jurisdiction of the court." 2 Story, *Eq. Jur.* § 898. For the purposes of the case at bar, it is not necessary to determine whether a showing of meritorious defense may not, under some circumstances, be dispensed with where the judgment was obtained without service, notice, or color of right, as it would even then be discretionary with the court to require it before granting an injunction. But the exercise of sound judicial discretion would exact it here, for the reason that there was at least color of claim that due service had been made, that the complainant had notice, and that the cause of action is founded on a liquidated and prima facie demand; and, in the same view, it is at least worthy of consideration that the statute of Illinois provides that "only so much of a judgment shall be enjoined as complainant shall show himself equitably not bound to pay." 1 Starr & C. *Ann. St.* p. 1284, c. 69, § 7. Although the statute of a state may not restrict or limit the equity powers of a federal court, its provisions may justly be observed, to the extent to which discretion can be exercised, within the general rules of equity jurisprudence. *Cowley v. Railroad Co.*, 159 U. S. 569, 582, 16 Sup. Ct. 127. This requirement is equitable. It does not impose upon the complainant the burden of proving a defense beyond doubt, but exacts the presentation of facts which carry conviction "that he should have an opportunity of submitting his case to a jury." *Ableman v. Roth*, 12 Wis. 81, 92. Failing in these material averments, the bill furnishes no grounds for an injunction, and the order of the circuit court is affirmed.

ALDERSON et al. v. DOLE et al.

(Circuit Court of Appeals, First Circuit. April 24, 1896.)

No. 168.

EQUITY—JURISDICTION—FEDERAL COURTS—STATE STATUTES.

The statute of a state providing for the filing of bills in equity for the enforcement of the liability of stockholders in corporations, does not authorize a federal court to entertain such a bill, where no special ground of equitable cognizance exists.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

Edward W. Cate, for appellants.
Ambrose Eastman, for Frank B. Dole et al. and the Cedar Spring Gold Min. Co.

Eugene P. Carver and Edward E. Blodgett, for Thomas F. Hunt et al.

Before PUTNAM, Circuit Judge, and NELSON, District Judge.

PUTNAM, Circuit Judge. This is an appeal from a decree dismissing, after a hearing on demurrers, a bill in equity to enforce alleged rights of action based on the statutes of Maine, a sufficient comprehension of which is given by the following, found in the Revised Statutes of 1883 (chapter 46):

"Sec. 45. The capital stock subscribed for any corporation is declared to be and stands for the security of all creditors thereof; and no payment upon any subscription to or agreement for the capital stock of any corporation shall be deemed a payment, within the purview of this chapter, unless bona fide made in cash, or in some other matter or thing at a bona fide and fair valuation thereof.

"Sec. 46. No dividend declared by any corporation from its capital stock or in violation of law, no withdrawal of any portion of such stock directly or indirectly, no cancellation or surrender of any stock, and no transfer thereof in any form to the corporation which issued it, is valid as against any person who has a lawful and bona fide judgment against said corporation, based upon any claim in tort or contract, or for any penalty, or as against any receivers, trustees, or other persons appointed to close up the affairs of an insolvent corporation.

"Sec. 47. Any person having such judgment, or any such trustees, receivers or other persons appointed to close up the affairs of an insolvent corporation, may, within two years after their right of action herein given accrues, commence an action on the case or bill in equity without demand or other previous formalities, against any persons (if a bill in equity, jointly or severally, otherwise severally) who have subscribed for or agreed to take stock in said corporation and have not paid for the same * * * and in such action they may recover the amount of the capital stock so remaining unpaid or withdrawn, not exceeding the amounts of said judgments or the deficiency of the assets of such insolvent corporation. * * *"

We need notice only one point. The bill sets up no special ground of equitable cognizance. It does not require any accounting, and, therefore, presumably the only remedy is at law. *Auer v. Lombard* (decided by this court) 72 Fed. 209, 211. The alleged liability of the stockholders creates no trust as towards the complainant. *Hollins v. Iron Co.*, 150 U. S. 371, 385, 14 Sup. Ct. 127. So that, independently of the statutes of Maine, there could be no jurisdiction in equity. Those statutes cannot affect the jurisdiction of the federal courts in that particular. This was clearly stated in *Van Norden v. Morton*, 99 U. S. 378, and has been many times reaffirmed in the supreme court. It was fully restated in *Wehrman v. Conklin*, 155 U. S. 314, 15 Sup. Ct. 129. The qualification given in *Bardon v. Improvement Co.*, 157 U. S. 327, 330, 15 Sup. Ct. 650, and in *Cowley v. Railroad Co.*, 159 U. S. 569, 583, 16 Sup. Ct. 127, does not reach the case at bar. In *Kennedy v. Gibson*, 8 Wall. 498, 505, there is a dictum that a receiver of a national bank may enforce a stockholder's liability by a bill in equity where less than the par of his stock is demanded; but no bill of that kind has ever been sustained by the supreme court, and the dictum cannot be supported unless an ac-

counting is required. In *Richmond v. Irons*, 121 U. S. 27, 7 Sup. Ct. 788, a creditors' bill was sustained to enforce the liability of stockholders in a national bank, but there an accounting of the debts of the bank was required, and the question of jurisdiction does not seem to have been raised. In *Tube-Works Co. v. Ballou*, 146 U. S. 517, 13 Sup. Ct. 165, a bill akin to this was dismissed, and that case was substantially so much like the one at bar as to guide us to the same result. Nothing herein concludes us as to any bill based on general equitable rules instead of a statute. The decree of the circuit court is affirmed, with costs.

In re LADD.

(Circuit Court, D. Nebraska. May 7, 1896.)

1. JURISDICTION—EFFECT OF CESSION BY STATE—NEW RESTRICTIONS.

An act of the legislature of a state ceding to the United States the jurisdiction of the state over a tract of land used as a military reservation, upon condition that such jurisdiction shall continue only so long as the United States shall own and occupy such reservation; that the state shall have the right, within the reservation, to serve civil process, and to execute criminal process against persons charged with crime committed within the state; and that roads may be opened and kept in repair within such reservation,—cedes to the United States the entire political jurisdiction of the state over the place in question, including judicial and legislative jurisdiction, except as to service of process and opening roads, and the same cannot be affected or further limited, without the consent of the United States, by a subsequent act of the state legislature attempting to impose additional restrictions on the jurisdiction ceded.

2. SAME—JUDICIAL OFFICERS.

After such cession a justice of the peace, acting under authority of the state, has no jurisdiction over the ceded territory in matters of alleged criminal violation of the laws of the state committed on such territory.

3. SAME—CIVIL AND CRIMINAL LAWS.

While after such cession the municipal laws of the state governing property and property rights continue in force in the ceded territory, except so far as in conflict with the laws and regulations of the United States applying thereto, the criminal laws of the state cease to be of force within the ceded territory, and laws regulating the sale of intoxicating liquors, requiring a license therefor, and punishing unlicensed sales, cease to be operative, both as in conflict with the regulations of the United States governing military reservations, and as penal in character.

Submitted on petition for writ of habeas corpus, and the return of Arthur M. Bartlett, sheriff of Dawes county, Neb., to the writ, showing the process under which the applicant was arrested, and the grounds for the issuance thereof.

A. J. Sawyer, U. S. Dist. Atty., and E. H. Crowder, Major and Judge Advocate U. S. Army, for petitioner.

Arthur M. Bartlett, pro se.

SHIRAS, District Judge. The facts of this case, as gathered from the record submitted to the court, appear to be as follows:

The petitioner, Eugene F. Ladd, is an officer of the United States army, holding the position of first lieutenant in the ninth cavalry,