

casion for such a suit cannot arise, as the new board are in full possession, the old board having surrendered, and neither the complainant nor any one else asks that they be removed. That the second prayer for an injunction against the appointment of a proxy in behalf of the state cannot be granted, as the former proxy has resigned and vacated the office, because the charter makes it imperative that the interest of the state be represented by proxy at all general meetings of the company. The fourth section of the amended charter gives the appointment of the proxy to the governor. That so much of the prayer for injunction as seeks to prevent an enforcement of the act of 25th February, 1897, entitled "An act to amend an act entitled an act to incorporate the Atlantic and North Carolina Railroad Company and the North Carolina and Western Railroad Company," or to adopt and accept the same without the consent of the private stockholders, should be granted. Let an injunction be prepared in accordance with this opinion. The bill, as against D. L. Russell, governor, Z. B. Walsler, attorney general, and the board of internal improvements, is dismissed. Let it be retained as to all the other parties.

AMERICAN FREEHOLD LAND-MORTGAGE CO. OF LONDON, Limited, v. WOODWORTH.

(Circuit Court, N. D. New York. August 18, 1897.)

No. 3,178.

CORPORATIONS—CREDITORS' SUIT AGAINST STOCKHOLDER — EFFECT OF RECEIVERSHIP.

Under the statute of Kansas giving a judgment creditor of a corporation the right to proceed by action to charge the stockholders with the amount of the judgment, such a creditor of a Kansas corporation may maintain an action in a federal court against a stockholder in another state, though the corporation is in the hands of a receiver.

This was a suit in equity by the American Freehold Land-Mortgage Company of London, Limited, a judgment creditor of an insolvent Kansas farm-mortgage company, against Chauncey B. Woodworth, to enforce defendant's liability as a stockholder in the Kansas corporation under the Kansas statute. The cause was heard on demurrer to the bill.

P. Tecumseh Sherman and W. Pierrepont White, for plaintiff.
William F. Cogswell and William N. Cogswell, for defendant.

COXE, District Judge. When this demurrer was first before the court it was decided that the action could be maintained upon the judgment alone without alleging or proving the original indebtedness. 79 Fed. 951. The remaining propositions were argued at the June term. Since the argument the circuit court of appeals for this circuit has rendered a decision which disposes of all the questions involved in favor of the plaintiff, with possibly one exception. *Whitman v. Bank*, 83 Fed. 288. It is argued that as the Kansas Mortgage Company is in the hands of a receiver, he is the only party who

can maintain this suit for the benefit of all the creditors. Although this precise point is not involved in the Whitman Case it is covered by the logic of that decision and the authorities cited in the former opinion herein. The Kansas law gives a right of action to the judgment creditor. This is enough. The demurrer is overruled, with costs. The defendant may answer within 20 days.

NORTHERN PAC. RY. CO. v. BALTHAZAR et al.

(Circuit Court, D. Washington, W. D. August 14, 1897.)

PUBLIC LANDS—GRANTS TO NORTHERN PACIFIC RAILROAD COMPANY—FORFEITURE.

The Northern Pacific Railroad Company not having definitely located any line of road between Portland and Wallula, the original grant of lands to it by Act July 2, 1864 (13 Stat. 365, § 3), never took effect as to lands between those points; and those of such lands lying contiguous to the line built from Portland to Tacoma, and within the limits of the grant made by the joint resolution of May 31, 1870 (16 Stat. 378), were embraced within the latter grant, and on compliance with its conditions the title thereto vested in the company and its grantees, and was not affected by the forfeiture act of September 29, 1890 (26 Stat. 496).

F. M. Dudley, for complainant.

C. E. S. Wood, for defendants.

HANFORD, District Judge. This suit was originally commenced by the receiver of the Northern Pacific Railroad Company, in behalf of said company, to quiet title and determine questions as to the rights of the company, under its land grant, to certain lands, aggregating about 200,000 acres, situated in the counties of Clark and Cowitz, in the state of Washington, which the company claims to have earned by the construction of that part of its road extending from Portland to Tacoma. Said lands were sold in tracts by the railroad company, and a large number of its vendees were made parties defendant, for the purpose of obtaining a decree restraining them from commencing actions to recover the purchase money paid to the company. The Northern Pacific Railway Company has been substituted as party plaintiff, it having succeeded to all the rights of the Northern Pacific Railroad Company and its receiver, by having purchased the railroad, with its lands and business, at the foreclosure sale. The controversy as to the title grows out of the act of congress of September 29, 1890, forfeiting that portion of the land grant coterminous with the line of the Northern Pacific Railroad between Portland and Wallula, through the valley of the Columbia river, which its charter authorized the company to construct.

In order to understand the questions submitted, it is necessary to consider the following acts and resolution of congress: By the act of July 2, 1864 (13 Stat. 365), the Northern Pacific Railroad Company, was created a body corporate, and said company was authorized to construct—

"A continuous railroad and telegraph line, with the appurtenances, namely, beginning at a point on Lake Superior, in the state of Minnesota or Wisconsin;