

court. The questions involved in it were passed upon by the chancery court of New Jersey, it had jurisdiction of the subject-matter, and the parties were the same. All questions now raised could have been raised there. In legal presumption, they were. With the entering of the judgment by that court, all matters involved in that issue passed, as between the parties thereto, from the possibility of litigation afterwards and elsewhere, into the conclusiveness of a final decree of that court. That decree was a complete answer to the present bill, and the decree dismissing it is affirmed.

In re CERTAIN STOCKHOLDERS OF THE CALIFORNIA NAT. BANK OF SAN DIEGO.

(District Court, S. D. California. November 28, 1892.)

NATIONAL BANKS—RECEIVER—SHAREHOLDERS—COMPOUNDING STATUTORY LIABILITY.

A federal court will not, even if it has the power under Rev. St. § 5234, grant an order authorizing a receiver of a national bank to compound the statutory liability of certain stockholders by accepting payment of a gross sum, less than is due, in satisfaction and discharge thereof, although more money would thus be realized than by proceedings to collect the same in the usual way, when it appears probable that such stockholders have fraudulently conveyed their property to avoid their legal obligations as stockholders, or to shield themselves from injury and exposure by litigation.

In Equity.

M. T. Allen, for petitioner.

ROSS, District Judge. This is an application for an order of the court authorizing the receiver of the California National Bank of San Diego to compound the statutory liability of certain of its stockholders. The petition for the order sets forth the insolvency of the bank, the appointment of the receiver by the comptroller of the currency, the qualification of the receiver, and his entry upon the duties of his office. It further sets forth that, at the time of the suspension of the bank, 781 shares of the capital stock of the association were owned by certain named persons, in certain stated shares, residing in the states of Maryland and Pennsylvania; that subsequently, it being made to appear to the comptroller of the currency that the assets of the bank were not sufficient to pay its liabilities, the comptroller, on the 5th day of May, 1892, levied an assessment of \$100 per share upon each and every share of the stock of the bank, and directed the petitioning receiver to take the necessary proceedings to enforce to that extent the individual liability of the shareholders. The petitioner states, upon information and belief, that many of the owners of the 781 shares are insolvent; that not more than 40 per cent. of the amount of the assessment against those shares could be collected by process of law, and that such collection would be at great cost and expense; that among other information furnished the petitioning receiver is that contained in the petition to the comptroller, signed by H. H. Haines, David M. Taylor, and S. R. Dickey, (holders of a portion of the 781 shares of stock,) a copy of which is attached to the petition of the

receiver; that the holders of the 781 shares, being 41 persons in number, have proposed to the receiver to pay a gross sum of \$30,000 in satisfaction and discharge of their liability as such shareholders; that the proposition to accept that sum of money, and compound and settle the liability of the stockholders, has been submitted to the comptroller of the currency, who has directed the receiver to petition the court for an order authorizing the settlement, a copy of which instructions is annexed to the petition; that the comptroller, however, required that all claims which any of the holders of the 781 shares may have against the trust, whether proven or unproven, should be assigned to the receiver for the benefit of the trust. The petitioner further represents that, in his opinion, it is for the best interests of the trust that the offer of \$30,000 in cash from the holders of the 781 shares of stock, in addition to the assignment and transfer of all their claims against the trust, be accepted in full of their statutory liability.

The petition of Haines, Taylor, and Dickey, addressed to the comptroller of the currency, represented, among other things, that the 781 shares of stock of the insolvent association are held by persons residing in the immediate vicinity of their residence; that of the 781 shares a large number are held by persons who are wholly insolvent, others by persons of very limited means, from whom nothing could be collected by execution, and others by persons who would resist the assessment by litigation and otherwise; that they (Haines, Taylor, and Dickey) have carefully computed the amount which could probably be realized by the trust through adverse proceedings from these 781 shares, the holders of all of which are personally known to them, as well as their responsibility, and in their judgment it would be less than 20 per cent.; that they (Haines, Taylor, and Dickey) have interviewed the holders of the 781 shares with a view of inducing them to join with the petitioners (Haines, Taylor, and Dickey) in making an offer of compromise, and through their efforts they have induced the insolvent stockholders to consent to make partial payment, which, added to the sum to be contributed by the remaining stockholders, will make a sum largely in excess of any sum that could be collected from them all by adverse proceedings; that the acceptance of the offer of compromise would result in immediate payment to the trust of a large sum of money, and would be a saving of time, trouble, and expense of litigation, which in some cases might be determined in favor of the stockholders; that this litigation would result in long delay, and, even if successful, in the mean time those who are now thought to be solvent may become insolvent, or otherwise unable to pay any judgment that ultimately may be recovered against them; that the petitioners (Haines, Taylor, and Dickey) are authorized, on behalf of the 41 stockholders of the 781 shares whom they represent, to pay the sum of \$30,000 in cash; and they ask that their proposition be accepted.

In his letter of instructions to the receiver, the comptroller said:

"The three gentlemen who make the proposition were largely instrumental in placing the stock of the bank with the holders in their immediate vicinity, and for that reason have some interest in shielding them from unnecessary loss or vexations through litigation. It is perfectly apparent, however, that the men who make this proposition of settlement on behalf of the others, and who would