their real total loss. Under the act no claim was allowed for any loss for which compensation had been made by an insurer, but, if such compensation was not equal to the loss actually suffered, allowance might be made for the difference. The complainant sued, on behalf of himself and all other underwriters interested, upon the policies issued to the respondents. The claim was that the insurers, having paid the total as agreed between them and the respondents, were subrogated to all their rights. The court below sustained the claim, but the decision was reversed on appeal. Lord Chancellor Selborne pointed out that the fallacy of the reasoning of the learned judges below was that they took the valuation of the policies as conclusive, and as operating by way of estoppel beyond the purposes of the contract of insurance, whereas, for purposes collateral to that contract, the insured could show that their loss was in fact greater than that which was covered by the policy. To apply that case to this: The Fidelity Bank was not permitted to show that the $300,000 loan was not in fact made by it, but, fraudulently, by its vice president, in furtherance of his own criminal purposes, because it had enabled that vice president to mislead the Chemical Bank into making the loan under the belief that it was conducting a genuine transaction with the Fidelity Bank. But Harper's position as vice president of the Fidelity Bank gave him no authority or control over the Whiteley, Fassler & Kelly notes. As to the disposition of those notes, E. L. Harper & Co. had placed him in a position which enabled him to make fraudulent use of them, but gave them no recourse against either the Chemical Bank or the Fidelity Bank. The Fidelity Bank had in fact nothing whatever to do with the fraudulent use of those notes, and it bears no such relation to E. L. Harper & Co. as to be under any estoppel to establish the facts as they exist. To the extent that the Fidelity Bank made it possible for Harper to effect the fraudulent loan from the Chemical Bank, the Fidelity Bank must respond to the Chemical Bank. To the extent that E. L. Harper & Co. made it possible for Harper to use the Whiteley, Fassler & Kelly notes in effecting the fraudulent loan from the Chemical Bank, E. L. Harper & Co. must be held responsible to the Chemical Bank. But to the extent that the Fidelity Bank has been injured by the fraud of Harper in the transaction, and that E. L. Harper & Co. have been injured, they must, severally, look to him alone. There was no privity in this transaction between the Fidelity Bank and E. L. Harper & Co. There was privity between each of them and the Chemical Bank, and therefore, by estoppel, they are held liable to that bank. The Whiteley, Fassler & Kelly notes were never in the possession of the Fidelity Bank, nor indorsed to that bank, nor by it to the Chemical Bank. They were in the possession of E. L. Harper, and by him indorsed, and sent to the Chemical Bank. Whether E. L. Harper & Co. were chargeable with notice of Harper's fraud in this matter is wholly immaterial. They are chargeable with the responsibility and liability resulting from having invested him with the authority which enabled him to do what he did do with those notes.

There is another conclusive objection to the complainant's claim to a decree in this cause. There is here a single debt against the Fidelity Bank, of $300,000. It has been proven against the Fidelity Bank by the Chemical Bank, and the claim of the Chemical Bank has been sustained by this court, without any reductions on account of the payments made by the complainant, or of the notes held as collateral. It is well settled that a surety for a bankrupt cannot prove an additional claim, if the creditor has a right to prove the entire amount of that claim. Judge Lowell, in Re Souther, 2 Low. 322, says:

"The payment made by the indorser after the maker of the note was a bankrupt cannot be proved by the surety as money paid under section 16, because it had not been paid at the time of the bankruptcy. It must either be proved as part of the note in the hands of the holder, and for the benefit of the indorser, or it is not provable at all."

Judge Lowell finds the law as stated, not as a construction of a statutory provision of the bankrupt act, "but merely that the section recognizes a familiar equity, and takes for granted that a creditor may prove the debt notwithstanding payment in whole or in part by a surety, because he in fact proves as the trustee of the surety." So, in Re Ellerhorst & Co., 5 N. B. R. 144, after citing section 5070 of the Revised Statutes of the United States, it is said:

"The two clauses together secure the attainment of justice in all cases. By the first the surety who has discharged the debt is subrogated in the right of the creditor whom he has paid. By the second the creditor may prove the whole debt. The surety cannot in such case prove, for that would be proving the same debt twice. But, if the surety has paid part, the creditor, after receiving in dividends satisfaction of the balance due him, will hold, as trustee for the surety, any dividends received by him in excess."

A surety—and this is the only relation which is claimed by counsel for Harper & Co. in the present case—may pay the debt, and then prove it, or he may compel the creditor to prove it. But he cannot, without paying the debt, make a second proof after the same debt has once been proved by the creditor.

The bill also seeks to have the claim upon the Whiteley, Fassler & Kelly notes allowed in favor of the complainant as an offset to the claim of the Fidelity Bank against E. L. Harper & Co. It is scarcely necessary to add to what has already been said that a claim that cannot be proved cannot be allowed as an offset.

The bill will be dismissed at the costs of the complainant.

REED v. DINGESS.

(Circuit Court, D. West Virginia. May 19, 1893.)

LAND GRANTS—FORFEITURES—REDEMPTION—LACHES.

A bill alleged that in 1796 the commonwealth of Virginia made a grant of a certain tract of land, described by metes and bounds, title to which, after various conveyances, vested in one Swan; that thereafter by virtue of several acts of assembly, the title to the tract, by reason of forfeiture of the grant, was vested in the directors of the literary fund; that by