

name and upon which magistrates had certified her acknowledgments. One of her daughters signed her name to these various conveyances, and allowed them to be delivered without objection or protest. Her son-in-law, acting as guardian for a minor child, accepted a mortgage which she executed in 1889 as security for \$3,000 of his ward's money. Between 1886 and 1890 one of her sons, acting as a notary public, certified her acknowledgments to five deeds. Ten different magistrates took and certified her acknowledgments of the execution of conveyances while she was suffering from this disease. Actions frequently speak louder and more truthfully than words, and it is difficult to contemplate the treatment accorded to Mrs. Parham by the members of her family and the magistrates of her vicinity without great doubt whether she was so incapable of conducting simple business transactions as some of the witnesses for the appellants now testify. The question is not whether her mental powers were impaired. It is not whether or not she had ordinary capacity to do business. It is whether she had any—the smallest—capacity to understand what she was doing and to decide intelligently whether or not she would do it. *Rugan v. Sabin*, 10 U. S. App. 519, 3 C. C. A. 578, and 53 Fed. 415, 421; *Stewart v. Lisenard*, 26 Wend. 303; *Ex parte Barnsley*, 3 Atk. 168; *Hill v. Nash*, 41 Me. 586; *Jackson v. King*, 4 Cow. 216; *Dennett v. Dennett*, 44 N. H. 531. Perhaps this rule and the reason for it have never been better expressed than by Senator Verplanck in *Stewart v. Lisenard*, *supra*, when he said:

“To establish any standard of intellect or information beyond the possession of reason in its lowest degree, as in itself essential to legal capacity, would create endless uncertainty, difficulty, and litigation, would shake the security of property, and wrest from the aged and infirm that authority over their earnings or savings which is often their best security against injury and neglect.”

In view of the testimony to which we have adverted, we are unwilling to hold that the court below committed any error in the application of the law or made any mistake in the consideration of the evidence when it concluded that the legal incapacity of Mrs. Parham was not clearly established. Where the trial court has considered conflicting evidence, and made its finding and decree thereon, they must be taken to be presumptively correct, and, unless an obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, the decree should be permitted to stand. *Tilghman v. Proctor*, 125 U. S. 136, 8 Sup. Ct. 894; *Kimberly v. Arms*, 129 U. S. 512, 9 Sup. Ct. 355; *Furrer v. Ferris*, 145 U. S. 132, 134, 12 Sup. Ct. 821; *Warren v. Burt*, 12 U. S. App. 591, 7 C. C. A. 105, and 58 Fed. 101; *Plow Co. v. Carson*, 36 U. S. App. 456, 18 C. C. A. 606, and 72 Fed. 387; *Farmers' Loan & Trust Co. v. McClure*, 49 U. S. App. 43, 24 C. C. A. 66, and 78 Fed. 209, 210.

The legal presumption was that Mrs. Parham was sane and capable. All who knew her so treated her while she lived. The decree of the court simply gives legal effect after her death to the existence of a fact which all seem to have conceded during her life. It ought not to be disturbed. A motion was made to dismiss this appeal,

but a careful consideration of the merits of the case has led us to the same result as would a granting of the motion. For this reason we have given it no consideration. The decree below is affirmed, with costs.

HOWARTH v. ELLWANGER. SAME v. KENT. SAME v.
WOODWORTH.

(Circuit Court, N. D. New York. March 31, 1898.)

Nos. 3,211-3,213.

1. BANKS AND BANKING—LIABILITY OF STOCKHOLDERS—SUIT BY RECEIVER.

Under the constitution and statutes of Washington, which provide: "That each stockholder of any banking * * * association shall be individually and personally liable, equally and ratably, and not one for another, for all the contracts, debts and engagements of such corporation or association accruing while they remain stockholders to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares,"—an action to enforce such liability may be maintained by a receiver.

2. SAME—LEVY OF ASSESSMENT.

The orders and decrees of the superior court of Washington in appointing a receiver of an insolvent state bank, ascertaining the deficiency, and directing an assessment on the stockholders, are binding on stockholders who are not parties to the proceedings.

At Law. Tried by the court.

These actions are brought against the defendants who were stockholders of the Traders' Bank of Tacoma, Wash., to enforce a liability created by the law of that state making them individually responsible equally and ratably to the extent of their stock for all debts of the bank while they remained stockholders. The plaintiff is a citizen of Washington residing at Tacoma. The defendants are citizens of New York residing at Rochester. On the 19th day of May, 1894, the plaintiff was appointed receiver of the Traders' Bank by an order of the superior court of Washington made in an action commenced against said bank by Henry Hewett, Jr., and George Browne in which it was adjudged that the bank had suspended business and was insolvent. The plaintiff duly qualified as receiver and has since acted as such. On the 12th of September, 1894, the court made an order in said action permitting certain stockholders to intervene for the benefit of themselves and all other stockholders of the bank. On the 20th of October all the defendants, except Chauncey B. Woodworth, were by order of the court upon their own petition made parties to the said action. After applying all the property of the bank to the payment of its debts there remained a deficiency, which, on March 17, 1897, was adjusted and adjudged by the court to be the sum of \$131,670. The plaintiff was thereupon directed by the court to levy upon the stockholders an assessment of 26.34 per cent. and bring suit against those stockholders who, after demand, refused to pay. The amounts assessed against the defendants respectively were duly demanded and payment thereof refused.

P. M. French, for plaintiff.

Charles M. Williams, for defendant Ellwanger.

M. H. McMath, for defendant Kent.

William F. Cogswell, for defendant Woodworth.

COXE, District Judge. It is not disputed that the defendants were stockholders of the Traders' Bank, that the bank became insolvent, that the plaintiff was appointed receiver, that a large deficiency was ascertained, that an assessment was levied by the receiver upon