bought of some one else, and that a broker purchasing stock has purchased from some broker other than the broker from whom he originally purchased the same. For instance, if A. had sold 100 shares of stock to X., and B. has bought the same amount of the same stock from Y., and X.'s and Y.'s accounts are balanced by other transactions, the substitution would make it appear that A. sold to B., and the names of the parties with whom the original transactions had actually been made by A. and B. would not appear on the clearing-house sheet. That, in the transactions on said exchange, it is then customary for the parties thus substituted and brought into the relation of buyer and seller with each other by the manager to assent to the new regulations thus formed, and to confirm the transactions thus adjusted by the manager, and to put up the margins required by the rules, unless margins are already on deposit in the exchange, in which case they are transferred by the manager to the new account."

Pursuant to this method, the firm of Schwartz, Dupee & Co. on the 3d of August cleared its transactions with the other brokers, resulting in 1,550 shares of the Diamond Match stock, the sellers of which were represented by Schwartz, Dupee & Co., being so transferred that the defendants stood, by substitution as to Schwartz, Dupee & Co., the purchasers, at 222. It is clear that thereafter, as between Schwartz, Dupee & Co. and the defendants, there was such privity of contract that the defendants were under obligation to take of Schwartz, Dupee & Co., during the month, 1,150 shares of the stock in question at 222. On the same day (August 3d) the stock exchange was, by order of its officers, closed, and remained closed until the 5th of November following. On the last day of the month, Schwartz, Dupee & Co. tendered to the defendants certificates for the 1,150 shares of the Diamond Match Company stock, which certificates the defendants refused to accept. Subsequently, in September, after due notice, Schwartz, Dupee & Co. sold these shares at public auction to the highest bidder, realizing therefor the sum of $130 per share. This resulted in a loss to them or their principals of about $92 per share. Under the rules of the stock exchange, 10 per cent., par value, of the stock dealt in, had been deposited with the stock exchange as a fund in guaranty of the transactions. The object of the present suit is to recover the difference between the contract and the selling price of these shares, and to subject this guaranty fund, amounting to $7,000, to the payment, pro tanto, of such loss.

There can be no question that there came into existence, by the transactions stated, a contract, primarily between Schwartz, Dupee & Co. and the defendants, whereby the latter were obliged to purchase of the former, and the former were obliged to sell to the latter, during the month, 700 shares of this stock, at the price of 222 per share. Nor can there be any doubt that the undisclosed principals of either of these parties were entitled to step into the place of these respective brokers, and in their own name, and for their own benefit, insist upon the enforcement of the contract according to its terms. Clearly, under the rules of the exchange, each of the brokers bound himself, both to the other broker, and to the principal whom the other broker represented, to carry out the terms of the contract. The only question is whether the complainants were parties principal to the contract between Schwartz, Dupee & Co. and the defendants. The evidence discloses that

their authority to the brokers was to sell 700 shares of this stock at 229; and, while the authority to sell for more than this might be implied, authority to sell for less could certainly not be. They were entitled, under their contract with Schwartz, Dupee & Co., to a purchaser at 229, or more. They were bound to no sale at a figure less. Neither Schwartz, Dupee & Co., nor any persons with whom that firm had contracted, could have compelled the complainants to deliver the stock at a price less than 229. But the contract between Schwartz, Dupee & Co. and the defendants was for the sale of 700 shares at 222. Under the contract between the brokers, the defendants could have demanded a conveyance at 222. But of whom could they have made such demand? Certainly not from the complainants. Their contract was for 229, and no less. The devices of the exchange for clearing and counterbalancing accounts between brokers could not, without their consent, change so essential a term of the complainants' sale. It cannot be that authority from a principal to sell at 229 can, without his conscious assent, be transformed into authority to sell at 222. The original understanding that the sale should be made under the rules and practice of the stock exchange cannot be interpreted to give such elasticity to the all-important feature of price. Who would deal on the exchange, as principal, if it were understood that the prices named had no fixity,—that the obligation might be one thing to-day, and another totally different thing to-morrow? While the substitutions, resulting in prices unquestionably different from those originally authorized, bind the brokers participating, they do not, in the absence of assent, reach over so as to change the contract rights of the principals. To hold otherwise would be to abolish by judicial pronouncement the authority on the faith and stability of which every transaction on the exchange is grounded. But if the defendants, under the substitution, could not hold the complainants, as principals, to the contract for the sale at 222, then, for want of mutuality, the complainants are in no position to hold the defendants. There is, indeed, no identity of contract between the one the complainants authorized, and the one entered into between Schwartz, Dupee & Co. and the defendants. That the complainants now choose to accept it is of no significance. The legal fact remains that they are not so bound, and, not being so bound, the defendants, on their part, are not legally bound. Whatever legal obligation the defendants owe is, under the contract of substitution, to Schwartz, Dupee & Co. alone. Between the complainants and the defendants there is no privity, and therefore no enforceable obligation. For the foregoing reasons the bill must be dismissed.

HUMPHREY v. THORP.

(Circuit Court, D. Oregon. July 15, 1898.)

No. 2,404.

1. COMPROMISE BY ATTORNEY—EVIDENCE OF AUTHORITY.
On an issue as to whether plaintiff had authorized his attorney to make a certain compromise of notes which he held for collection, the attorney testified that in June plaintiff had authorized him to make the compromise. Plaintiff denied this, and introduced letters written by the attorney after the alleged grant of authority, asking for instructions as to such compromise. In other letters written after the compromise the attorney justified the compromise on the ground that he had written to plaintiff beforehand, telling him that he would make it unless instructed to the contrary. Plaintiff denied receiving such letter, and letters in evidence, written just before the compromise, contained no such statements. An attorney for the maker of the note, who left the town more than a month after the alleged authority, testified that just before leaving he had refused to make the compromise because plaintiff's attorney did not have the originals of the notes, and produced no authority for making such a compromise. *Held*, that there was sufficient evidence to sustain a finding that there was no authority for the compromise.

2. PROMISSORY NOTE—COMPROMISE—CONSIDERATION.
The maker of a note, who was foreclosing a mortgage on property on which there was another prior lien, deposited in court the amount of such lien, to be used in satisfaction thereof. The attorney for the payee of the note, who was also attorney for the holder of the first lien, made an agreement with the maker of the note that the amount applied in satisfaction of the lien should be credited on the note. *Held*, that such agreement was without consideration, and not binding on the payee of the note.

3. COMPROMISE—RATIFICATION.
And the fact that the payee wrote to the attorney asking him why, if he had made a collection on the note, he did not pay it over, did not amount to a ratification of the agreement.

4. PAYMENT—SUFFICIENCY OF EVIDENCE.
On an issue as to whether a balance on a note had been paid, an attorney who claimed to represent the payee testified that at the time of the first payment an agreement was made whereby a certificate of deposit for considerably more than the balance was turned over to him by the maker's attorneys, to be used in payment of the note as soon as the original should be forwarded to him, and that he put the certificate in his safe, where it has been ever since. The certificate, however, was of a date more than a month later than the alleged agreement. The firm of attorneys for the maker afterwards dissolved, and payee's attorney formed a partnership with one of them. The certificate of deposit was afterwards sent to the other one, who still represented the maker, and by him cashed. The maker's testimony did not show that he had not received the proceeds of the certificate. *Held*, that the evidence failed to establish the issue.

5. COURTS—CONFLICTING JURISDICTION.
An action in personam in the courts of a state cannot be pleaded in abatement in another action in a federal court in another state, although there is an identity of parties, subject-matter, and relief sought.

O. F. Paxton and J. V. Beach, for plaintiff.
J. T. Ronald and R. A. Ballinger, for defendant.

BELLINGER, District Judge. This is an action upon two promissory notes, in which the jury found a verdict in favor of the plaintiff in the amount claimed. The defendant relied upon the defense of payment, concerning which the facts are as hereinafter stated.