

in a federal court upon proper joinder of necessary parties and lawful service. The decree of the circuit court is affirmed, with costs to the several appellees.

---

**BAKER v. OLD NAT. BANK OF PROVIDENCE, R. I. et al.**

(Circuit Court of Appeals, First Circuit. January 19, 1899.)

No. 263.

**1. APPEAL—DECISIONS REVIEWABLE—FINALITY OF DECREE.**

In a suit by the receiver of a national bank against stockholders to recover an assessment laid by the comptroller, one defendant alleged that he was merely a pledgee of the stock from a co-defendant, and, after a hearing on bill and plea, a decree was passed dismissing the bill as to the pledgee, but there had been no determination as to the other defendants. *Held* that, if it should be finally determined that the pledgee is liable for the assessment, he would be entitled to have the decree so molded as to compel exoneration by the pledgor. Therefore the decree was not final, so as to permit of an appeal by complainant.

**2. SAME.**

Practice of holding case for an ultimate final decree, as in *Frow v. De La Vega*, 15 Wall. 552, commended.

Appeal from the Circuit Court of the United States for the District of Rhode Island.

Algernon S. Norton and Joseph F. Daly (C. Frank Parkhurst, on brief), for appellant.

Herbert Almy, for appellees.

Before PUTNAM, Circuit Judge, and WEBB and LOWELL, District Judges.

PUTNAM, Circuit Judge. This bill was brought by the statutory receiver of a national banking association in the state of Washington against several alleged stockholders resident in Rhode Island, for an assessment laid by the comptroller, amounting to 75 per cent. of the par of the shares, which was \$100 each. Except as herein stated, the several defendants had no joint interest, as under the statutes of the United States each was severally liable for the assessment laid on his own shares, and for nothing more. No objection has been made to the joinder of several stockholders as defendants. There is, however, a plain objection to our jurisdiction, which, under the well-settled rules, we must take cognizance of, although no question in reference thereto has been made by the parties.

Among the stockholders who are made defendants in the bill was one Abram Barker, who is charged with liability on 180 shares of stock, which are in addition to the shares to which this appeal relates; but the bill prays for relief generally against him. Among the other defendants are the Old National Bank of Providence and Francis A. Cranston, who, or one of whom, is sought to be charged for the assessment on 100 shares of stock which were transferred by Abram Barker to "F. A. Cranston, cashier." Cranston was the cashier of the Old National Bank of Providence. There are some matters in the

record to sustain a finding that the registration of the transfer on the books of the insolvent bank was made in the following form: "F. A. Cranston, cashier Old National Bank of Providence, R. I." It does not appear on the record whether this form of registry was authorized by the parties to the transfer, and for present purposes it is not necessary that this fact should be ascertained. The record shows, however, that, if Cranston should be holden for the assessment, the defendant bank must exonerate him therefrom.

The bank and Cranston united in a plea, of which it is necessary to refer to only so much as alleges that the 100 shares in issue were transferred by Barker to "F. A. Cranston, cashier," acting in behalf of the defendant bank, to hold as collateral security for the indebtedness of Barker to it. The case was set down for hearing on the bill and plea. The court thereupon determined the plea in favor of Cranston and the defendant bank, and the complainant not asking to amend his bill, or for the determination of the issue of fact raised by the plea, a decree was entered, which took the form of a final decree, sustaining the plea and dismissing the bill "as to the respondents the Old National Bank of Providence and Francis A. Cranston." 86 Fed. 1006. The record shows no determination of any issue as between the complainant and the other defendants, including Barker, and no progress in the case, except the disposition of the plea and the entry of the decree, as we have said. Thereupon the complainant appealed from the decree to us; but we are compelled to hold that, notwithstanding the form of the decree, it was not of that final character which will permit an appeal at this stage of the litigation. With reference to the general rule on which this proposition rests, we need cite only *Hohorst v. Packet Co.*, 148 U. S. 262, 13 Sup. Ct. 590, *Bank v. Smith*, 156 U. S. 330, 15 Sup. Ct. 358, and *Marden v. Manufacturing Co.*, 67 Fed. 809, and refer to the principles which underlie those decisions. If each of the various defendants here had no relations to each other, except that they were stockholders in the same national banking association, it may be the rule would not apply. Nevertheless, as all the defendants are interested in the same underlying questions, there are serious objections to having a case of this kind come up by several successive appeals, on one of which different phases might be presented from those presented on another, leading to inconsistent results. The proper way is to hold the suit for one ultimate decree, as was pointed out in *Frow v. De La Vega*, 15 Wall. 552, 554. If it should be determined that Cranston and the defendant bank are not liable for this assessment, on the ground, stated in the plea, that the stock is held as collateral for the indebtedness of Barker, it would follow that Barker is liable for it. It is not at all clear that the bill is not already framed in such manner that this liability might be determined against him. But, beyond that, if it should finally be determined that Cranston or the defendant bank is liable for this assessment, whichever one is so holden would be entitled to have the decree so molded as to compel exoneration by Barker. It is therefore plain that, in any event, Barker has an interest in the issue now before us, and that, whatever may be the condition as to the other defendants, the litigation should have been fully determined so far

as Barker is concerned, and he should have been made a party to the appeal, in order to give us jurisdiction thereof.

The appeal is dismissed, without prejudice and without costs.

---

FARMERS' LOAN & TRUST CO. et al. v. DART.

(Circuit Court of Appeals, Fifth Circuit. December 20, 1898.)

No. 664.

CLERKS OF CIRCUIT COURTS—COMMISSIONS—FUNDS IN HANDS OF RECEIVER.

A clerk of a circuit court is not entitled to a commission, under Rev. St. § 828, on moneys of a receivership, deposited and paid out directly by the receiver under orders of the court, which never came into the possession of the clerk, and for which he was not responsible.

Appeal from the Circuit Court of the United States for the Eastern District of Texas.

In April, 1889, the Farmers' Loan & Trust Company filed its bill to foreclose a first mortgage on the Waco & Northwestern Division of the Houston & Texas Central Railway Company. The property covered by the mortgage was placed in the hands of a receiver. The foreclosure proceedings were protracted, and the property was finally sold at a foreclosure sale. During the proceedings the railroad was operated by the receiver, and a large amount of surplus revenues accrued from the operation of the road, and from the rental and sale of lands covered by the mortgage. By order of the court the surplus revenues were deposited from time to time with the assistant treasurer of the United States at New Orleans, La. On June 7, 1897, with a view to complete the sale of the property and wind up the receivership, the court made an order of reference to the special master in the cause. He was directed to ascertain the amount of funds to the credit of the cause, the sources from which the funds were received, the amount and character of all outstanding claims, the distributive share of each bond, the costs and charges still unpaid, and other matters necessary for a final settlement of the receivership. A full history of the litigation was given on previous appeals to this court. 24 C. C. A. 487, 79 Fed. 202; 24 C. C. A. 495, 79 Fed. 210; 24 C. C. A. 497, 79 Fed. 212; 24 C. C. A. 500, 79 Fed. 215; 24 C. C. A. 506, 79 Fed. 222. The clerk, in transmitting to the special master the order of reference of June 7, 1897, wrote a letter to the special master, accompanied by a statement and certificate purporting to show the deposits in the registry of the court in the cause, and also a bill of costs by which the clerk allowed himself 1 per cent. on \$650,212.16, the amount of the deposits. The clerk, in his letter to the special master, stated that the bill of costs was not intended to be referred to him for taxation, as he (the clerk) had taxed the costs in accordance with the power conferred on him by law, but that the bill of costs was forwarded as being one of the items included in the reference. The solicitors for certain intervening bondholders objected to the bill of costs before the special master on the ground that the claim of the clerk was not due under the act of congress fixing the compensation and fees of clerks in such matters, and especially on the ground that the money referred to had not been received, kept, and paid out by the clerk. The special master, in his report, after stating the manner in which the bill of costs had reached him, and the declaration of the clerk that the bill of costs had not been transmitted to the special master for taxation, made no finding as to the claim, "inasmuch as this involves a question of law not specially referred to the master." After the report of the special master had been filed in the lower court, the clerk moved the court to enter an order for the payment of his claim. This was opposed by the Farmers' Loan & Trust Company, complainant in the cause, and by the intervening bondholders, and they moved for a retaxation of the costs. The lower court rendered a decree allowing the clerk the full amount of his