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New Jersey Court of Errors and Appeals

This action was brought in the Court of Chancery of New Jersey by the creditors of the State Bank of Monte Vista, a corporation organized in the year 1890, under the laws of the State of Colorado, against all the known stockholders of that bank, who reside in New Jersey, to enforce against the defendants a liability imposed by the laws of Colorado passed in 1885, on page 264, Section 1, as follows:

"Stockholders in banks, savings banks, trust, deposit and security associations, shall be held individually responsible for debts, contracts, and engagements of said associations, in double the amount of the par value of the stock owned by them respectively."

The said bank, having become insolvent, made an assignment, June 15th, 1899, of all its assets to Norman H. Chapman, assignee, and the said assignee took possession of said property and has disposed of the same and applied the proceeds thereof upon the claims of the creditors who have proven their demands as provided by the laws of that State. The amount of said payments was nineteen and one-half per cent. There is still due the creditors, with interest, about the sum of $75,000.

The capital of the bank was $80,000, divided into eight hundred shares of $100.00 each, all of which was issued and is now held by a large number of individuals, residents of different States. The defendants are all of the stockholders living in this State.

The bill prays for the payment of the amount due from each of them respectively on their statutory stock liability.

The defendants demurred to the bill upon the following grounds:

1st. That the complainants have not in their bill stated such a case as entitled themin a court of equity to any relief against the defendants or any of them, as to the matters contained in said bill, and their residences are not definitely given.

2d. That it appears by the bill of complaint that the names of the natural persons and of the corporations, are not accurately or correctly set forth in said bill.

3d. That it appears by the bill that there are divers other persons who are necessary parties to said bill and who are not made parties thereto, and in particular it appears by the bill that the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors named in said bill is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by the said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the provence or power of this Court to make the ascertainment and afford

the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered and the proceeds justly and equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the said bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statutes of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The State of Colorado, upon which the complainants rely, contemplates a proceeding in

equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a *pro rata* liability. This Court will not enforce the liabiiity created by the Statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stockholders by the provisions of the Statute of the State of Colorade quoted in the bill of complaint is not enforceable in the Courts of this State.

The demurrers having been sustained by the lower Court the complainants appeal to this Court.

It is well settled that any one of the complainants has an action at law in this State against any one of the defendants.

Auer v. Lombard, 72 Fed. Rep. 209;
Dennick v. Railroad Co. 103 U.S. 11, 18;
Zang v. Wyant, 25 Colo. 557;
Western v. Reckless, 96 Fed. 70 (N. J. case);
The Vice-Chancellor says so in his opinion in this suit.

This answers the eleventh ground for demurring above.

If the complainants are compelled to seek relief in the courts of law it means over four hundred law actions. The expense and inconvenience will be enormous.

A court of equity will, in a single suit, take cognizance of such a controversy in order to prevent a multiplicity of suits.

(See decision of Court of Errors and Appeals in Hart v. Leonard, 42, Equity, page 416.)

Pomeroy Eq. Jur. § § 245, 269;
Libby v. Norris, 142 Mass. 246, 7 N. E. 919;
Osborne v. Wisconsin Cent. R. Co. 43 Fed. 824.
Macon & B. R. Co. v. Gibson, 85 Cal. 1, 11 S. E. 442;
Sang Lung v. Jackson, 85 Fed. 502, 504;
Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. Rep. 418;
Liverpool & L. & G. Ins. Co. v. Clunie, 88 Fed. 160;
Hart v. Leonard, 42 N. J. Eq. 416;
Britton v. Hill, 27 N. J. Eq. 389;
Kennedy's Heirs v. Kennedy's Heirs, 2 Ala. 571;
Fletcher's Chancery—page 76.

The appellants are seeking the aid of the Court of Chancery upon the one equitable ground alone, namely, to avoid a multiplicity of suits. They have no idea of claiming the aid of the Court of Chancery on any other equitable ground with the bill drawn in its present shape. The form of the bill indicates as much. The defendants and the Court below have never grasped the situation. It has never dawned upon them that this suit was brought in the Court of Chancery to avoid almost endless litigation and enormous costs and that the Chancery has undoubted jurisdiction under Hart v. Leonard. The defendants have gone through the reported cases and collected all the grounds for demurring that have been used in stockholder cases and cases where creditors' bills were filed, where entirely different remedies were sought, and have

dumped these demurrers into court and they seem to have drawn attention from the simplicity of this case and the one ground upon which jurisdiction is claimed by appellants. The first, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth grounds for demurring can have no possible bearing on this bill, relying as the appellants do on the one single equitable ground mentioned for the maintenance of this suit in a Court of Chancery. It would certainly seem that that equitable ground is apparent on the face of the bill with four hundred and forty-nine complainants with claims from one cent to thousands of dollars and nearly twenty defendants owing large amounts, and the recognized right of any one of the complainants to sue any defendant in an action at law.

The Vice-Chancellor says the bill is multifarious, but it is well settled that a bill does not come within the evil of multifariousness when the joinder therein of distinct matters prevents a needless multiplicity of suits, and neither inconveniences the defendants nor causes additional expenses.

Stafford Nat. Bank v. Sprague, 8 Fed. 377;
People v. Morrill, 26 Cal. 336;
Grant v. Phoenix Life Ins. Co. 121 U. S. 105;
Chase v. Searless, 45 N. H. 511;
Smith v. Bank of New England, 69 N. H. 254, 45 Atl. 1082;
Animarium Co. v. Neiman, 98 Fed. 14;
United States v. American Bell Telephone Co. 128 U. S. 315;
Demarest v. Holdeman, 157 Ind. 467, 62 N. E. 17.

No general rule can be laid down as to what constitutes multifariousness. The Court must exercise a sound discretion in determining from the circumstances of each case whether the bill is liable to the objection.

Emans v. Emans, 1 McCarter, 118.

This bill is not multifarious, for where, as in this case, "each of the complainants has a standing in Court, and their causes of action are not antagonistic, and the relief they pray involves in each case the same questions and requires the same evidence and the same decree, their joinder does not render the bill multifarious. A bill brought by several persons claiming under a common title, but in different shares and proportions, is not multifarious."

Fletcher Eq. Pl. & Pr., p. 148.

"To authorize a suit against a number of persons, there need not be a community of interest between them; but where a common question of law, arising upon similar facts, is involved between the complainant and each defendant, they may be made defendants."—*Ibid*, page 151.

In Boyd v. Hoyt, 5 Page 78, Chancellor Walworth states the rule thus:

"Where the object of a suit is single, but different persons have a claim to have separate interests in distinct or independent questions, all connected with and arising out of the single object of the suit, the complainant may bring such different persons before the Court as defendants, so that the whole object of the bill may be obtained in one suit, and

to prevent further unnecessary and useless litigation."

1 C. E. Gr. page 216.

The rule to be applied in disposing of this objection is that laid down by the Court of Errors in Railroad v. McFarlan, 31 N. J., Eq. 758, in these words:

"The rule we require to multifariousness, whether arising from misjoinder of causes of action or of defendants therein, is not an inflexible rule of practice or procedure, but is a rule founded in general convenience, which rests upon a consideration of what will best promote the administration of justice without multiplying unnecessary litigation on the one hand, or drawing suitors into needless and unnecessary expenses on the other."

In more specific answer to the objections of the Vice-Chancellor we submit the following:

Line 7, page 70 to line 7, page 71, of the Vice-Chancellor's opinion.

We argue that on the one equitable ground for maintaining this suit, there is no need of an accounting as between the complainants and any or all of the defendants, no need of a discovery, no need to state facts to indicate the existence of any trust, or to set up any fraud. We do claim that with 449 complainants and 11 defendants mentioned in our bill with, as the Vice-Chancellor says, "a direct, certain and adequate remedy by (each complainant, for they cannot join in a suit at law) suit at law to recover each sum which they claim against the several defendants respectively;" we have the best of reasons for an appeal to equity jurisdiction on the

aforesaid ground, and that a ground for equitable jurisdiction is exhibited. (Hart v. Leonard, *supra*) and further:

A declaration with the same allegations as set out in this bill is sufficient in law.

Western National Bank v, Reckless, *supra.*

And a bill in equity need not be more certain than a declaration.

Paterson & H. R. R. Co. v. Jersey City, 1 Stock. 434.
Randolph v. Daly, 1 C. E. Gr. 313.

Lines 2 to 14, page 72.

The appellants hold that suits in equity in this state are maintained "because they are effectual and convenient remedies to complainants."

Britton v. Hill—*supra.*
Hart v. Leonard—*supra.*

Line 15, page 72 to line 5. page 73.

The fact that the Court of Chancery has no jurisdiction to render a binding decree against non-resident stockholders is sufficient reason for making only the New Jersey stockholders defendants.

See v. Heppenheimer, 61 Atl. 843.

It is not necessary that the several claims appear otherwise than several and distinct and unrelated if the ground for equity jurisdiction is to avoid a multiplicity of suits. All the defendants are represented by one firm of lawyers and as the proof

against each defendant will be the same it will in no way embarrass any of the defendants.

Lines 6, 7 and 8, page 73.

No "equitable decree" is asked.

Lines 9 to 25, page 73.

No equitable construction of the defendants' statutory liability is sought by appellants. Each defendant should be decreed to pay his full stock liability, as if he were sued at law, where the amount owing by the New Jersey defendants is less than the whole amount due the appellants, as is the case in this suit, and let the defendants recover contribution from non-resident defendants, under the principle in See v. Heppenheimer, *supra*. That burden does not fall on the appellants.

Lines 5 to 22, page 74.

The appellants will have to prove their case under oath and are no more likely to collect more than is due them than the holder of a note who collects said note by suit from one of several endorsers or guarantors, instead of from all of them.

In conclusion, there is in this suit no seeking to have the stockholders contribute to a fund; the fund is already in thé hands of the shareholders; and this action is to compel the New Jersey stockholders to pay their full statutory liability and if they feel that they have paid more than is fair, they must recover contribution from the non-resident stockholders.

It will readily be seen that an action at law brought by A, who is a creditor, against B, who is

a stockholder, in which action the liability of B is a thousand dollars and the claim of A is fifty dollars, that there would be an action on behalf of A in which he would secure the full payment of his claim of fifty dollars and the cost for the collecting of the same, as in McCarthy v. Lavasche, 89 Ill. 270, C, another creditor, would then bring an action against B; he would have, say, a claim of sixty dollars against the bank. His claim would be satisfied in full, with costs, and so on, one after another, until the full thousand dollars in the hands of B had been exhausted to pay the claims of a portion of the creditors of the bank. B must constantly be annoyed with these various suits; there would be a multiplicity of suits, and it might be that a portion of the creditors would thus have their claims paid in full, and a larger other portion would secure nothing, by reason of the fact that the few had exhausted that amount. Now, equity says this thousand dollars shall be collected from B in one action and distributed to all the creditors *pro rata* according to the amount of their claims. It is a question of convenience and justice and right, that the claims of the appellants should be collected in equity rather than by successive law actions.

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Pomeroy emphatically maintains that equity has jurisdiction in a case of this kind.

Sec. 243. "'Multiplicity of suits,' which is to be prevented, constitutes the very inadequacy of legal methods and remedies which calls the concurrent jurisdiction into being under such circumstances, and authorizes it to adjudicate upon purely legal rights, and confer purely legal reliefs."

Sec. 249. "What multiplicity of suits is it which a court of equity will prevent? What party must be harrassed, or incommoded, or threatened with numerous litigations, and from whom must such litigation actually and necessarily proceed, in order that a court of equity may take jurisdiction, and prevent it by deciding all the matter in one decree? Finally, how far is the prevention of a multiplicity of suits an independent source of the equitable jurisdiction? Can a court of equity ever interfere on behalf of the plaintiff, upon the ground of preventing a multiplicity of suits, where such plaintiff would not otherwise have had any recognized claim for equitable relief or any legal cause of action? Or is it essential that a plaintiff should have some existing cause of action, equitable or legal, some existing right to either equitable or legal relief, in order that a court of equity may interfere and exercise on his behalf its jurisdiction founded upon the prevention of a multiplicity of suits?"

Sec. 250. "The very object of preventing a multiplicity of suits assumes that there are relations between the parties out of which other litigations of some form might arise. But this prior existing cause of action, this existing right to some relief of the plaintiff need not be equitable in its nature. Indeed, in the great majority of cases in which the jurisdiction has been exercised, the plaintiff's existing cause of action and remedial right were purely legal; and it is because the only legal remedy which he could obtain was clearly inadequate to meet the demands of justice, partly from its own inherent imperfect nature, and partly from its requiring a num-

ber of simultaneous or successive actions at law, that a court of equity is competent to assume or exercise its jurisdiction."

Sec. 251, page 327. "What multiplicity of suits is it which a court of equity will prevent? What party must be harrassed, or incommoded, or threatened with numerous litigations, and by whom must such litigation be instituted, in order that a court of equity may take jurisdiction and prevent the inconvenience and wrong by deciding all the matters in one decree? These questions must chiefly belong to cases of the third and fourth classes, as described in a preceding paragraph, where the 'multiplicity' to be prevented arises from the fact that many persons claim or are subject to some general right, although their individual interests are separate and distinct."

Sec. 251, page 329. "Suits have often been sustained by a single plaintiff against a numerous class of defendants, and by or on behalf of a numerous class of plaintiffs against a single defendant, avowedly on the ground of 'preventing a multiplicity of suits,' where there was no relation existing between the individual members of the class and their common adversary to which the term 'privity' was at all applicable. Of course there must be some common relation, some common interest, or some common question, or else the decree of a court of equity, and the relief given by it in the one judicial proceeding, could not by any possibility avail to prevent the multiplicity of suits which is the very object of its interference."

In Sec. 254, Prof. Pomeroy, in speaking of numerous actions at law by one plaintiff against one defendant, lays down certain doctrine which is applicable in this suit, as we shall show later on. He says: "It must be admitted that this exercise of the equitable jurisdiction is somewhat extraordinary, since the rights and interests involved are wholly legal, and the substantial relief given by the court is also purely legal. It may be assumed,

therefore, that a court of equity will not exercise jurisdiction on this particular ground, unless its interference is clearly necessary to promote the ends of justice, and to shield the plaintiff from a litigation which is evidently vexatious. It should be carefully observed that a court of equity does not interfere in this class of cases to restrain absolutely and completely any and all trial and decision of the questions presented by the pending actions at law; it only intervenes to prevent the repeated or numerous trials, and to bring the whole within the scope and effect of one judicial investigation and decision."

In Sec. 255, Prof. Pomeroy, having considered certain phases of this subject, which he has designated as first and third, goes on to state what classes of cases shall be designated third and fourth classes. In the third, a number of persons have separate and distinct interests, but still united by some common tie, against one determined party, and these interests may perhaps be enforced by one equitable suit brought by all the persons joining as co-plaintiffs, or by one suing on behalf of himself and all the others, or even by one suing for himself alone. The fourth is the exact converse of the third.

If a stockholder in the present suit of Miller vs. Willett, owing ten thousand dollars on his stock liability, should be sued at law by fifty depositors (as he no doubt could be) the interests of the plaintiffs could be enforced by one equitable suit brought by all joining as co-plaintiffs. This would clearly fall within the third class mentioned above by Prof. Pomeroy.

So, on the other hand, a large depositor might bring actions at law against two or three of the smaller stockholders and so would fall within the fourth class mentioned above. It will be seen, therefore, that in this

suit, where there is a greater element of "multiplicity" than in any case mentioned by Prof. Pomeroy, or even of record, that we can find, there is all the more need that equity intervene to prevent numerous trials, and to bring the whole within the scope and effect of one judicial investigation and decision.

Sec. 255, page 336. "The first and most important question which meets us is, what must be the character, the essential elements, and the external form of the common right, claim, or interest held by the number of persons against the single party in the third class, and by the single party against the number of persons in the fourth class, in order that a court of equity may acquire or exercise jurisdiction for the purpose of preventing a multiplicity of suits, and may determine the rights of all and give complete relief by one decree? Is it necessary that the common bond, element, or feature should inhere in the very rights, interests, or claims themselves which subsist between the body of persons on the one side and the single party on the other, and should affect the nature and form of those rights, interests, or claims to such an extent that they create some positive and recognized existing legal relation or privity between the individual members of the group of persons, as well as between each of them and the single determined party to whom they all stand in an adversary position? Or is it enough that the common bond or element consists solely in the fact that all the rights, interests, or claims subsisting between the body of persons and the single party have arisen from the same source, from the same event, or the same transaction, and in the fact that they all involve and depend upon similar questions of fact and the same questions of law, so that while the same positive legal relation exists between the single determined party on the one side and each individual of the body of persons on the other, no such legal relation exists between the individual members themselves of that body?—as among themselves their respective rights, interests, and claims

against the common adversary party, otherwise than above stated, are wholly separate and distinct. This question lies at the foundation of the whole discussion."

Prof. Pomeroy says in Note 1, to section 264, that: "The opinion in Marselis vs. Morris Canal Co., 1 N. J. Eq., 31, is one of the most carefully considered and elaborate presentations of this restricted and negative view of the doctrine to be found in the reports, and I shall therefore quote from it at some length."

The opinion is lengthy, and at the close Prof. Pomeroy says, in commenting upon the case: "In whatever manner we may regard the general course and tendency of the chancellor's reasoning in this opinion, it is very evident that the actual decision made upon the facts does not in the slightest degree conflict with any of the cases heretofore quoted, in which the jurisdiction has been exercised."

In his further discussion of cases bearing on the subject, Prof. Pomeroy says: "The chief object of the jurisdiction, the fundamental ground and reason for its existence is, that it furnishes a complete and final remedy by one equitable decree to parties whose primary rights, causes of action, and remedies are wholly legal, either to a single party who must otherwise maintain or be subjected to numerous actions at law, or to a body of persons, where each of them must otherwise maintain or be subjected to a similar action at law."

Sec. 267, pages 365 and 366. In his conclusion, Prof. Pomeroy says: "In cases belonging to the third and fourth classes, when a body of persons asserts some claim against a single distinct party, or, conversely, a single distinct party asserts some claim against a body of persons, the fundamental question, upon which the exercise of the jurisdiction confessedly rests and over which there has been a direct antagonism of judicial opinion, relates to the nature, extent, and object of the common interest which must exist among the individual members of the numerous body, or between them and their single

adversary, in order that a court of equity may interfere. Incidental to this main element, the further question has been raised: What party is entitled to relief for the purpose of preventing a multiplicity of suits?—whether the plaintiff who invokes the aid of a court upon the ground must himself be the person who would otherwise, and against his own choice, be exposed to a repeated and vexatious litigation? We have also seen, in a certain class of cases growing out of some unauthorized public official act, the principle has been announced that, under the circumstances, the injured persons, citizens, or inhabitants of a local district, has no cause of action of any kind, no claim to any relief from a court of justice. This principle, which may be correct, is avowedly based alone upon considerations of governmental policy and public expediency, and has therefore *no* legitimate connection with the doctrine concerning the prevention of a multiplicity of suits. The principle has, however, in some subsequent decisions, been regarded and acted upon very improperly in my opinion, as though it directly applied to, interfered with, abridged, or regulated the equitable jurisdiction to prevent a multiplicity of suits. The error involved in the mingling of two entirely distinct matters has, I think, been shown with sufficient clearness in a previous note."

Sec. 268. "From a careful comparison of the actual decisions embraced in the third and fourth classes, and which are quoted under the foregoing paragraphs, the following propositions are submitted as established by principle and by authority, and as constituting settled rules concerning this branch of the equitable jurisdiction. In that particular family of suits, whether brought on behalf of a numerous body against a single party, or by a single party against a numerous body, which are strictly and technically 'bills of peace,' in order that court of equity may grant the relief and thus exercise its jurisdiction on the ground of preventing a multiplicity of suits, there does and must exist among the individuals composing the numerous body, or between each of them

and their single adversary, a common right, a community of interest in the subject-matter of the controversy, or a common title from which all their separate claims and all the questions at issue arise; it is not enough that the claims of each individual being separate and distinct, there is a community of interest merely in the question of law or of fact involved, or in the kind and form of remedy demanded and obtained by or against each individual."

In the same section he says: "Notwithstanding this general theory of the jurisdiction which prevailed at an early period, it is certain that even then the court sometimes transcended the arbitrary limit, and exercised the jurisdiction, where there was no pretense of any community of right, or title, or interest in the subject-matter.

"This early theory has, however, long been abandoned. The jurisdiction, based upon the prevention of a multiplicity of suits, has long been extended to other cases of the third and fourth classes, which are not technically 'bills of peace,' but are 'analogous to' or 'within the principle of ' such bills. Under the greatest diversity of circumstances, and the greatest variety of claims arising from unauthorized public acts, private tortious acts, invasion of property rights, violation of contract obligations, and notwithstanding the positive denials by some American courts, the *weight of authority is simply overwhelming that the jurisdiction may and should be exercised, either on behalf of a numerous body of separate claimants against a single party, or on behalf of a single party against such a numerous body, although there is no 'common title,' nor 'community of right,' or of 'interest in the subject matter,' among these individuals, but where there is and because there is merely a community of interest among them in the question of law and fact involved in the general controversy, or in the kind and form of relief demanded and obtained by or against each individual member of the numerous body.*"

Later on, in the same section, he says: "Courts of the highest standing and ability have repeatedly interfered and exercised this jurisdiction, where the individual claims were not only legally separate, but were separate in time, and each arose from an entirely separate and distinct transaction, simply because there was a community of interest among all the claimants in the question at issue and in the remedy. The same overwhelming weight of authority effectually disposes of the rule laid down by some judges as a test, that equity will never exercise its jurisdiction to prevent a multiplicity of suits, unless the plaintiff, or each of the plaintiffs, is himself the person who would necessarily, and contrary to his own will, be exposed to numerous actions or vexatious litigation. This position is opposed to the whole course of decision in suits of the third and fourth classes from the earliest period down to the present time. While the foregoing conclusions are supported by the great weight of judicial authority, they are, in my opinion, no less clearly sustained by principle. The objection which has been urged against the propriety or even possibility of exercising the jurisdiction, either on behalf of or against a numerous body of separate claimants, where there is no 'common title,' or community 'of right,' or 'of interest in the subject-matter,' among them, is that a single decree of the court cannot settle the rights of all; the legal position and claim of each being entirely distinct from that of all the others, a decision as to one or some could not in any manner bind and dispose of the rights and demands of the other persons, and thus the proceeding must necessarily fail to accomplish its only purpose—the prevention of further litigation. This objection has been repeated as though it were conclusive; but, like so much of the so-called 'legal reasoning' traditional in the courts, it is a mere empty formula of words without any real meaning, because it has no foundation of fact—it is simply untrue; one arbitrary rule is contrived and then insisted upon as the reason for another equally arbitrary rule. The sole and sufficient answer to the objection is found in the actual facts. The jurisdiction has been ex-

ercised in a great variety of cases where the individual claimants were completely separate and distinct, and the only community of interest among them was in the question at issue and perhaps in the kind of relief, and the single decree has, without any difficulty, settled the entire controversy and determined the separate rights and obligations of each individual claimant. The same principle therefore embraces both the technical 'bills of peace,' in which there is confessedly a common right or title or community of interest in the subject-matter, and also those analogous cases over which the jurisdiction has been extended, in which there is no such common right or title or community of interest in the subject-matter, but only a community of interest in the question involved and in the kind of relief obtained."

The case of Black vs. Shreeve, 7 N. J. Eq., 440, is frequently mentioned by Prof. Pomeroy as maintaining the doctrine of equity jurisdiction which we maintain in the present suit.

It will be observed from the above that there is not only community of relief but also community in the questions at issue and in the subject matter. Stockholder A cannot say that he is not interested in the suit against stockholder B by any one or more depositors, when he, A, might have been sued by the same depositor or depositors. When the bank failed, owing debts, and had insufficient assets to pay, and the stockholders neglected and refused to pay, that was an injury to all the depositors together, not necessarily to any particular one. It is not necessary, however, under the doctrine laid down by Prof. Pomeroy that there be community of interest between the defendants themselves or between the complainants themselves; the fact that equity will furnish a complete and final remedy by one equitable decree and

that a number of simultaneous or successive actions at law as mentioned in Black vs. Shreeve, 7 N. J. Eq., 440, will be avoided, and that there is a community of interest in the question involved and in the kind of relief obtained, are sufficient beyond all question to give our court of chancery jurisdiction.

HORTON & TILT,
TOLLES & COBBEY,
Solicitors for, and
EUGENE EMLEY,
Of Counsel with Appellants.

New Jersey Court of Errors and Appeals

Between
ALFRED L. MILLER ET ALS.,
Appellants-Complainants,

and

JOHN A. WILLETT ET ALS.,
Appellees-Defendants.

On Appeal.
On Demurrer to Bill.

Brief for Appellees.

POINTS.

The appellees rely upon the following points made upon the appropriate causes of demurrer:

POINT I.

Upon the assumptions of thebill of complaint the complainants have an effectual, complete, direct, certain and adequate remedy at law.

POINT II.

The bill of complaint lacks necessary parties, and the Court of Chancery will not take jurisdiction of complainants' cause of action except in a suit wherein all the stockholders and the corporation itself are made parties, and that such a suit can be brought in the State of Colorado, only, whose courts have jurisdiction of the corporation, it being domiciled there.

POINT III.

A court of equity has no jurisdiction of the cause presented by the bill of complaint, because it seeks to recover a penalty.

POINT IV.

The present proceeding cannot be maintained because it is prohibited by Chapter 50 of the acts of the Legislature of New Jersey, approved March 30, 1897.

POINT V.

The bill is multifarious.

POINT VI.

The names of the persons complainant are not accurately set forth in the bill and their residences are not definitely given.

POINT VII.

The parties made defendants as "heirs at law and devisees" of Anna Basch, "heirs at law and devisess" of Edo Kip, and "heirs at law and devisees" of Moses E. Worthen, cannot be proceeded against in equity, for the matters in complainants' bill, nor is any liability on their part shown in the bill.

The following are the causes of demurrer to the bill of complaint :

"1st. That the complainants have not in their bill stated such a cause as entitles them in a court of equity to any relief against the defendants, or any of them, as to the matters contained in said bill.

"2nd. That it appears by the bill of complaint that the names of the natural persons and of the

corporations are not accurately or correctly set forth in said bill, and their residences are not definitely given.

"3d. That it appears by the bill of complaint that there are divers other persons who are necessary parties to said bill and who are not made parties thereto; and in particular it appears by the bill that the State Bank of Monte Vista, named in said bill, is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors, named in said bill, is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

"4th. That it appears by the said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding it is not within the province or power of this Court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

"5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere, or have in any way the validity of their claims judicially determined against said bank.

"6th. That it does not appear by said bill that

the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

"7th. That it does not appear by said bill that the assets of said bank were legally and properly administered, and the proceeds justly and equitably applied to the reduction of the debts of the creditors.

"8th. That it does not appear by said bill that the assets of the said bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties, or wherein the rights and equities of the stockholders of said bank were duly regarded.

"9th. That the complainants' rights depend upon the statute of the State of Colorado which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

"10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

"11th. That the liability imposed upon stock-

holders by the provision of the statute of the State of Colorado quoted in the bill of complaint is not enforceable in the courts of this state.

"12th. That it appears by the bill that the same is exhibited against this defendant and the several other defendants for distinct matters and causes in several whereof, as appears by said bill, this defendant is not in any manner concerned and that the bill is multifarious."

The defendants Isaac Basch, Marion Feder, James S. Basch, Carrie Basch, Matilda Basch, and Emma J. Basch, heirs-at-law and devisees of Anna Basch, deceased, demur for the first twelve reasons above mentioned and the additional reason "that the bill does not set forth any facts showing a liability on their part for the debts of Anna Basch."

The defendants, Arianna Van Houten, Ella K. Goodlatte, Mary J. Kipp, John E. Kipp and John Kipp demur for the first twelve reasons above mentioned and for an additional reason "that the bill does not set forth facts showing their liability for debts of Edo Kipp."

The defendant, the Passaic Trust and Safe Deposit Company demurs for the first twelve reasons above mentioned, and for the additional reason "that the bill does not set forth facts showing any liability on its part for Moses E. Worthen."

The Bill of Complaint.

The parties complainant number *four hundred and forty-seven* persons. Some hundreds of them are given no *Christian names*, but are described by *initials* only. Many are given names as suggestive of *partnerships as of corporations*, but nothing is stated in reference to them by which it may be concluded that they are either one or the other. *No residence* which can be identified is given the parties, but they are described as being "of Crede, in the County of Mineral; Monte Vista, in the County of Rio Grande; and Hooper, in the County of Costilla, in the state of Colorado, and that your orators are all the depositors in and creditors of the State Bank of Monte Vista in the County of Rio Grande, State of Colorado, aforesaid."

The parties defendant consist of four individuals, alleged to be shareholders in the said Bank; four persons said to be four out of five the "heirs and devisees" of one Edo Kip, deceased, who was said to have been, in his life time, a shareholder of said bank; six persons alleged to be the "heirs and devisees" of one Anna Basch, deceased, who was said to have been, in her lifetime, a shareholder of said bank; four natural persons and a corporation alleged to be the "heirs and devisees" of one Moses E. Worthen, deceased, said to have been, in his lifetime, a shareholder of said bank; and one William P. Aldrich who, it is alleged, subscribed for stock in the name of "Estate of C. Aldrich" and

thereby became individually liable as a shareholder.

Said Edo Kip and Moses E. Worthen are alleged to have died prior to the insolvency of said bank.

THE STATING PART of the bill substantially alleges that the State Bank of Monte Vista was incorporated under the laws of Colorado, A. D., 1890, with a capital stock of $30,000, which in 1891 was increased to $80,000, the shares having a par value of $100; that it opened for business at Monte Vista, in the state of Colorado, and shortly after established a branch bank at Hooper, called the Farmers' Bank of Hooper, and another at Creede, called the Miners' Bank of Creede, which branches had no separate corporate existence; that it conducted a general banking business until *June 15, 1899, when it became insolvent and made an assignment* under the laws of Colorado and appointed one Norman H. Chapman as assignee; that the assignee converted all the assets into money and paid out the same to those creditors of the bank set forth in a list in the bill of complaint beginning with the name "C. B. Abbott" and ending with the name "S. E. Zollinger" (these names appear on pages 8 to 19 of the state of the Case) under the order and direction of the District Court of the Twelfth Judicial District of the State of Colorado, which dividend amounted to nineteen and one half per cent. of the "indebtedness" of the bank; but whether paid *pro rata* or not fails to appear; that those named in said list after "S. E. Zollinger" have received nothing on

their respective debts; that the amount due each creditor is set opposite his name in said list showing,

Total due creditors (appellants).....$ 66,115.93
Less 19½ per cent. dividend..... 11,646.90

Balance.....$54,469.03

with interest at eight per cent. from June 15, 1899.

That the laws of the state of Colorado at the time of the organization of said bank, provided, that, "Shareholders in banks, savings banks, trust deposit and security associations shall be held individually responsible for debts, contracts and engagements of the said associations, in double the amount of the par value of the stock owned by them respectively," and that said law has been at all times, since the organization of said bank, and is now, in full force and effect.

That the following named persons or parties were shareholders in said bank when appellants became creditors and were shareholders at the date of the assignment made by said bank, and held respectively the following shares:

John A. Willett.....Five shares
Richard D. Kent.....Five shares
Frederick Lowe.....Five shares
William P. Aldrich.....Thirty shares
Edo Kip.....Five shares
Anna Basch.....Forty shares
Moses E. Worthen.....Thirty shares
Estate of C. Aldrich.....Thirty shares

That Edo Kip died *February 16th, 1899*, testate and seized of certain land and tenements;

that he left him surviving as his "heirs at law and devisees" of said lands Arianna Van Houten and others, all of whom are made parties defendant save one.

That Anna Basch died Nov. 24, 1903, testate and seized, etc., leaving her surviving as her "heirs at law and devisees" Isaac Basch, and others, parties defendant.

That Moses E. Worthen died *December 26th, 1897*, testate and seized, etc., and leaving him surviving as his "heirs at law and devisees" Irene C. Mansur and others and the Passaic Trust and Safe Deposit Company, trustee.

That William P. Aldrich for and on his own responsibility, but in the name of the "estate of C. Aldrich," subscribed for thirty shares of the stock of said bank and in the name of the "estate of C. Aldrich" was a shareholder, etc., and, by so subscribing became individually liable, etc.

That the defendants are the only shareholders within the jurisdiction of the Court.

That under and by virtue of the statutes of the State of Colorado pursuant to which said bank was incorporated and continued to exist each and every stockholder of said bank agreed to assume, and did assume liability for the indebtedness of said bank in case of deficiency or insufficiency of corporate assets to liquidate such indebtedness in double the amount of the par value of his stock, and that by virtue of the statutes *the defendants are severally* and *individually indebted* to appellants in double the amount of the par value of the stock owned by them respectively.

THE PRAYER of the bill is that the defend-

ants, John A. Willett, Robert D. Kent and Frederick Lowe may each be decreed to pay appellants the sum of one thousand dollars; that William P. Aldrich may be decreed to pay appellants the sum of twelve thousand dollars; that the defendants, Arianna Van Houten and others, "as heirs-at-law and devisees" of Edo Kip, deceased, may be decreed to pay appellants the sum of one thousand dollars; that defendants, Isaac Basch and others, as "heirs-at-law and devisees" of Anna Basch, deceased, may be decreed to pay complainants the sum of eight thousand dollars, and that the defendants, Irene C. Mansur, and others, and the Passaic Trust and Safe Deposit Company, trustee, as "heirs-at-law and devisees" of Moses E. Worthen, deceased, may be decreed to pay appellants the sum of six thousand dollars.

POINT I.

Upon the assumptions of the bill of complaint, the complainants have an effectual, complete, direct, certain and adequate remedy at law.

Equity will not interfere where adequate relief can be had at law.

That an action at law may be had for money accruing to an individual by virtue of a statute is beyond question.

"Though a statute may in some respects be considered as a specialty yet assumpsit may be supported for money, etc., accruing due to the

plaintiff under the provisions thereof, he not being restricted to any other particular remedy." 1 Chitty Pl., 106.

"Debt is frequently the remedy on statutes either at the suit of the party grieved, or of a common informer." Ibid, 111. Case may also be brought. Ibid, 243.

The complainants pray for a money decree, only. There is absolutely nothing in their claim as stated, involving equitable rights, or which requires the application of equitable principles. They allege that the defendants in becoming stockholders of the Monte Vista bank assumed, under the Colorado statute, a certain contractual obligation to become liable for the debts of the bank in case of insufficiency of corporate assets in double the amount of the par value of the stock; that debts of the bank are due them; that a deficiency of assets exists; that by virtue thereof the defendants are "severally and individually indebted to your orators in double the amount of the par value of the stock * * * owned by them respectively." The allegations conform quite substantially to those of a declaration in debt on bond. The bill sets forth the obligation, the condition, the breach and the debt, or penalty.

The learned Vice Chancellor says in this case "As the complainants state their case, there is no ground of equitable jurisdiction exhibited. The facts set forth in the bill of complaint, if taken to be true, as asserted by the complainants, do show that they have a direct, certain and adequate remedy by suit at law to recover

each sum of money which they claim against the several defendants respectively. There is, therefore, no occasion for an appeal to equity jurisdiction."

The fact that the complainants are numerous affords, in itself, no occasion for the exercise of the jurisdiction of a court of equity. In all cases when equity takes cognizance of the claims of several parties complainant ~~and~~ having a remedy at law, in order to avoid a multiplicity of suits arising from the number of the parties, the claim of each complainant against the defendants is several, and, therefore the anomoly of their joinder. But in the case at bar the claim *in the suit* is claimed in the complainants jointly. They premise no several rights as against the defendants, and therefore no multiplicity of suits is to be feared or prevented. If an action was brought at law, no one creditor could bring the suit; he would be obliged to join all the others.

This arises from the nature of his contract, under the Colorado statute, according to its construction by the courts of that state, in the case of *Zang v. Wyant, 56 Pac. Rep., 566.* In that case the defendant stockholders objected to the suit of the creditors because, as was alleged, the assignee of the bank, only, had a right to sue. The court however held that the assignee had no right in the fund, but that it was constituted for the benefit of *all the creditors* and might be pursued in equity, for their common benefit, *by or for all.*

In the opinion is quoted the language of Chief

Justice Waite who, as the court says "in discussing the procedure that should be adopted for the enforcement of a liability provided in the Charter of the Merchants Bank of South Carolina, in language substantially the same as that used in our statute, said, undoubtedly the object was to furnish additional security to creditors, and to have the payments, when made, apply to the liquidation of debts. So, too, it is clear that the obligation is one that may be enforced by the creditors; but, *as it is to or for all creditors*, it must be *enfored by or for all.*"

It is true that the Court in the case of *Zang v. Wyant* says that the creditors may seek their remedy in equity. In a suit before the proper forum, with proper parties, and with proper allegation to charge them this would not be denied. In a suit for an accounting in which the corporation, the assignee and all the stockholders were parties, in which suit the sums due to each creditor as against the corporation as well as against the stockholders could be ascertained, and in which the equities of the stockholders as against each other could be determined, a proceeding in equity would be eminently proper. But the language of the Court cannot be taken to mean that these joint creditors can proceed in equity to obtain a decree that the defendants pay to them a sum of money; to obtain a mere money judgment. For the sake of the argument it may be admitted that the Court in the case cited interpreted the Colorado statute as meaning that these complainants might proceed in equity to get a mere money judgment against defendants; yet a statute of Colorado could

give them no such remedy in New Jersey. The State of Colorado may fix the contractual rights of those making contracts within its jurisdiction, but it cannot give them a remedy necessary enforceable in the courts of other states. In determining the obligation of contracts the *lex loci contractus* prevails; in the application of remedies the *lex fori. Gulick v. Loder, 1 Gr., 68: Harker v. Brink, 4 Zab., 333; Wood v. Malin, 5 Halst, 208; Garr v. Stokes, 1 Harr, 404.* It must be in a court having jurisdiction of the subject matter. *Dennick v. R. R. Co., 103 U. S., 11.*

As was said by the learned vice chancellor in the court below, "It has been declared by the Colorado courts, interpreting this statute, in the case of *Zang* v. *Wyant, 25 Col., 551*, that a suit in equity for the common benefit of all the creditors affords the most effectual and convenient proceeding to enforce the provision under examination. This very general statement of the occasion for a suit in equity may define correct equity practice in a state in which the distinction between law and equity tribunals is not maintained, but the course of procedure there suggested cannot be recognized as authority here without bringing our practice into inextricable confusion. Suits in equity in this state are maintained, not because they are effectual or convenient remedies to complainants, but because the relations of the complainants to the defendants are such that they have against them equitable grounds for relief."

The recent case of *Clark et al.* v. *Knowles, 187 Mass., 35*, was brought by four hundred and twenty-five persons, averring that they were

he only known creditors of the Colorado State Bank of Grand Junction, against a stockholder of the bank, by bill in equity similar to the present bill of complaint; *C. J. Knowlton*, speaking for the Supreme Judicial Court, in denying the right of complainants to proceed in equity under such a bill of complaint says: "If the Court of Colorado has decided otherwise, its decision is not binding on this court. *Scott v. Neeley, 140 U. S., 106, 116; Elkhart Nat. Bank v. Northwestern Guaranty Loan Co., (C. C. A.), 87 Fed. Rep., 252: Finney v. Guy, 180 U. S., 355.* Its decisions as to the substantive provisions of the statute must be followed and we do not attempt to question it. But when the substantive provisions are made plain, the mode of procedure and practice in giving the remedies provided by the statute, depends upon the law of the place where the remedy is sought."

If the defendants are severally liable in fixed sums to complainants suit in equity to recover cannot be maintained. Tompkins v. Graig, 93 Fed., p. 885, Cir. Ct. E. D. Pa.

The Iowa statute, construed in this case, provided that the stockholders should be individually and severally liable to the creditors of the corporation over and above the amount of stock held by them to an amount equal to their respective shares. The Court held the liability to be legal not equitable.

Hale v. Allisin, 102, page 790, Cir. Ct. E. D., Penn., was a proceeding under the Minnesota statute. Head note: "Equity is without jurisdiction of a suit by a receiver of an insolvent

corporation against numerous stockholders to recover an additional liability imposed by statute on the single ground that a multitude of actions at law will be thereby avoided where the amount of the assessment has been previously adjudicated in a general suit, and has been fixed at the full amount of the statutory liability since no question remains in which the defendants have a common interest, and the suit is merely an aggregation of separate suits," &c.

The Court said that equity would not acquire jurisdiction merely on the ground that the money when collected would become part of a fund that would be distributed under the Court's control.

Same case on appeal to Circuit Court of Appeal, 706 Fed., 258, Court says : "The bill alleged that under the constitution and laws of Minnesota, the stockholders were severally liable to an amount not exceeding the par value of their respective shares for any deficiency of the assets of the corporation to meet its indebtedness. That the existence of such deficiency was ascertained and was found to be so great as to require every stockholder to contribute to the full amount of his liability."

It was asked that the stockholders "be adjudged liable to pay and contribute to the extent of the par value of their several holdings of stock for the equal benefit of the creditors of the corporation." Opinion of the Court below was affirmed.

The same case was taken by certiorari to

United States Supreme Court and there affirmed. 188 U. S., 56.

Cites Marselis v. Canal Co., 1 N. J. E., 31.

Demarest v. Hardham, 34 N. J. E., 469.

Rowbotham v. Jones, 47 N. J. E., 337.

In *Barkalow v. Totten, 8 Dick., 573*, the Court held that ~~often~~ after a call was made to stockholders to pay their unpaid subscriptions to stock, that the remedy of the receiver for the recovery of the amount called was in a court of law against the stockholders severally, and that an action against them jointly in equity could not be maintained.

In the case at bar complainants are proceeding as though the liability of defendants was fixed and determined in a known sum, no accounting being necessary, and, therefore, upon the assumptions of the bill, a suit at law would lie as held in *Barkalow* v. *Totten, supra, and Hood* v. *McNaughton, 25 Vr., 425.*

POINT II.

The bill of complaint lacks necessary parties.

It is submitted that the Court of Chancery should not take jurisdiction of complainants cause of action except in a suit wherein all the stockholders and the corporation itself are made parties, and that such a suit can be brought in the state of Colorado only, whose courts have jurisdiction of the corporation, it being domiciled there.

The cause of action in this suit arises out of the contractual relation of the defendant stock-

holders to the complainant creditors created by the holding of stock by the former under the provisions of the Colorado statute set forth in the bill of complaint.

Under statutes of this character, the liability of the stockholders, thereby created, has been variously determined. But the liability under the Colorado statute has been fixed by the construction there by the courts of that state.

In *Zang v. Wyant, supra*, the variance in interpretation is expressly recognized, the Court saying :

"Upon whom the right to enforce the remedy devolves, and the mode of procedure that should be adopted, have been in controversy in many of the courts of last resort, and have been variously decided ; *some holding* that the liability is primary and enforceable in an action at law by an individual creditor against one or more of the stockholders, *while in others*, and by far the greater number, it is held that the fund created by the statute is in the nature of a security for the common benefit of all the creditors, and that a suit in equity affords the most effectual and convenient remedy for its enforcement. * * * *The additional liability of stockholders imposed by our statute constitutes a fund for the benefit of all the creditors, which may be pursued in equity, for their common benefits, by or for all.*"

The Court approved of the case of *Terry v. Little, 101 U. S., 216.* The statute in that case provided that on the failure of the bank "each stockholder shall be liable and held bound for any sum not exceeding twice the amount of his

shares." The Colorado court referring to the ~~language~~ statute imposing the liability in Terry v. Little said that it was "substantially the same" as ~~that imposed by~~ the Colorado statutes, and quotes therefrom as follows: "This, as we think, means that on the failure of the bank each stockholder shall pay such sum not exceeding twice the amount of his shares as shall be his just proportion of any fund that may be required to discharge the outstanding obligations." In Terry v. Little the Court said "the provision is in legal effect for a proportionate liability by all stockholders."

The court also approved of *Pfohl v. Simpson, 74 N. Y., 137*, quoting as follows: "The object and effect [of a suit in equity] is only to bring to one forum the determination of rights, which must, if prosecuted separately, more or less conflict to mutual harm. Before that one forum, in one suit, the respective rights and the respective liabilities can be ascertained and determined, and each get his own, and be subjected to his own, and not another's, and the equities between the respective stockholders can also be adjusted and settled."

If the fund to be raised from stockholders is to be apportioned among them and is a fund for the benefit of all the creditors, the proceeding must be one in which there shall be ascertained, first, the amount of the indebtedness of the corporation; second, the amount of its assets and the fund to be raised; and third, the proper apportionment of the sum to be paid by the stockholders, and distributed among the creditors. If the creditors can sue eight stockhold-

ers in New Jersey, others in Maine, Massachusetts and Rhode Island, each court would have to determine these facts, and the decision of each Court would affect stockholders who were not within its jurisdiction. Rights of contribution, rights of accounting and rights of subrogation, are all involved in such suits. One court may reject the claims of certain creditors, while another may find them valid; one court, upon evidence, may find that the corporation assets are so insufficient that the full amount may be required from stockholders; another may find that only a part is necessary. It therefore becomes important to have in mind that familiar rule of equity procedure which requires that all persons interested in the subject matter of the suit shall be either plaintiffs or defendants, that the rights of all may be settled, complete justice be done, and future litigation prevented.

Under the statute of New Jersey, in order that a creditor may take advantage of the stockholders' liability created by section 21 of "An act concerning corporations" (Revision of 1896) he must fix his own debt by judgment and execution and then file a bill in behalf of all the creditors of the corporation. The *corporation is a necessary party* to the suit; all the property and assets of the corporation must be brought into the suit, and put in the course of administration. *Wetherbie v. Baker, 8 Stew. Eq., 501*; *Bickley v. Schlag, 1 Dick. Ch., 533.*

After the *quantum* of liability is fixed, the action may be brought at law by the receiver

after being directed by the chancellor to sue, *Hood v. McNaughton, 25 Vr., 425; Barkalow v. Totten, 8 Dick., 537.*

When the corporation is insolvent and its business ended the assessments can be only for so much of what is unpaid on the stock as will satisfy the corporation creditors and pay the expenses of winding up.

While the language of the Colorado and the New Jersey statutes differ, and the extent of the stockholders' money liability thereby created, are not the same, yet the nature of the respective liabilities seems to be substantially alike.

1st. Both statutes create a stockholders' liability to provide a limited fund for the payment of the debts and obligations of the company.

2nd. This fund does not constitute the primary or regular fund for the payment of the corporate liabilities.

3rd. It is a "fund for the benefit of all creditors."

4th. It may be pursued in equity for the common benefit of all the creditors, by or for all.

When it comes to the form of the remedy in the Colorado courts, *Zang v. Wyant* did not decide that the corporation is not a necessary party but only that the right to raise the question on appeal had been waived. But, however, it may be determined in Colorado, the

form of remedy here is fixed conclusively by our own laws, as declared by our own courts.

Wetherbee v. Baker, *supra*, was an action brought by a creditor of an insolvent corporation against its stockholders for unpaid subscriptions to its stock. It was objected on appeal, for the first time, that the corporation was not a party, and the objection, to quote the language of the Court was entertained on appeal "with reluctance" but was deemed "insuperable." Mr. Justice Depue said: "It is manifest from a consideration of the circumstances under which delinquent stockholders are liable to creditors for their unpaid subscriptions, and of the nature of the trust which is created, that, in any proceeding to enforce the liability of stockholders, under this section, all the property and assets of the corporation must be taken into account, and that the proceedings must be for the benefit of all the creditors. The assets of the corporation and its total indebtedness must be brought into the account; for until they are ascertained, neither the amount of money required to satisfy the creditors of the corporation, nor the proportion of the sum required to be paid by each stockholder can be ascertained: * * * * * * In such a suit the corporation is a necessary party, for without the presence of the corporation as a party to the suit no account of its property or of its debts can be taken."

In *Cumberland Lumber Co.* v. *Clinton Hill Lumber Co.*, supra, the Court of Chancery, upon petition of the receiver and answer of the stockholders, but without replication or proofs,

ordered the receiver to assess, call and collect the whole amount of the unpaid subscriptions. Justice Dixon, speaking for this Court, said, "We think the order is wrong, because it is not based upon any determination of the amount required to meet the purpose in view."

In the case at bar the creditors ask the defendant stockholders (who hold only 3-16 of the shares) to pay $30,000—like suits against the other stockholders would make the total sum recovered $160,000—to pay debts amounting, as alleged, to but $56,469.03 ; and this without any determination of the amount required for the purpose in view as was the case in *Cumberland, &c., Co. v. Clinton Hill, &c., Co.* That purpose is the payment to creditors of the amounts due them, or such proportion thereof as may be raised from the stockholders. The amount to be raised from the stockholders is an amount to be determined by the ascertainment of the amount due creditors and without regard to any other factors, for absence from the jurisdiction, or the insolvency of any one stockholder will not increase the liability of another stockholder, as has been held in many states, including Massachusetts, in which arose the case of *Crease* v. *Babcock*, 10 *Metc.*, 525, referred to with approval in *Zang* v. *Wyant, supra.* In *Crease* v. *Babcock*, Chief Justice Shaw said : "When the liability of stockholders is several, and is limited, the liability of one stockholder cannot be increased because the other stockholders are beyond the jurisdiction of the Court, so that they cannot be reached by process, or because they are in-

solvent." In *Terry* v. *Little*, *supra*, Chief Justice Waite said : "Each stockholder is bound for his own share and no more. No judgment can be rendered against him for what another should pay."

In *Clark v. Knowles*, the creditors relied in a suit against a single stockholder upon the same Colorado statute as that invoked in the present case. The Court after considering the case of *Zang v. Wyant*, supra, said "In all essential particulars, therefore, in reference to the proper mode of giving a remedy and of adjusting the rights of the parties in interest, this statute calls for procedure similar to that referred to in many cases, namely by a suit in equity to which the corporation is a party, brought for the benefit of all the creditors against all the stockholders. Ordinarily such bill can not be maintained elsewhere than in the state where the corporation is organized. There must be a jurisdiction of the corporation as well as of the stockholders."

The complainants in *Clark v. Knowles* averred in their bill that under the law of Colorado the corporation and assignee were not necessary parties, but *Knowlton, Chief Justice*, said *Zang v. Wyant* did not so state the law of Colorado, but that if it did, its decision could not bind the the courts of Massachusetts ; nor would the latter state give effect to the Colorado statute " if it calls for remedies which, according to our rules of practice, cannot be given for want of jurisdiction of the necessary parties."

The court refused to decide whether a remedy

might be had against the corporation or a non-resident stockholder by a suit in Colorado, in which such non-resident's liabiltiy might be fixed and form a basis of subsequent auxiliary proceedings against the stockholders, and said, "Even if the remedy provided should prove to be entirely ineffectual against non-resident stockholders, it would not be a sufficent reason for our disregarding established principles and rules of practice."

To the like effect are the following Massachusetts cases: *Erickson v. Nesmith, 4 Allen, 233*; *Post v. Toledo, &c., R. Co., 144 Mass., 341*; *New Haven Horse Mail Co., v. Linden Spring Co., 142 Mass., 349.*

Erickson v. Nesmith, 4 Allen, 233 (1862).

This was a bill in equity against Massachusetts stockholders in a New Hampshire corporation to enforce stockholders' liability.

Dewey, J. "It is true, the principal ground assigned for refusing to entertain the action (i. e., an action at law in Massachusetts) was that no such action was allowed to be maintained in New Hampshire against a stockholder by those laws, a bill in equity being there required in which, under the decision of their Courts all the stockholders must be made defendants, and as it would seem, the suit must be brought in behalf of all the creditors.

"This was a sufficient reason for dismissing that action; but the court were careful not to express any opinion upon the question whether even a bill of equity could be maintained against a citi-

zen in Massachusetts in the courts of Massachusetts for the purpose of charging him with the statute liability created solely by virtue of the laws of New Hampshire. The Courts in that case say, as to that matter, if such bill in equity will not lie, it will be because the statute of the state which confers on them the right, has failed to provide a remedy which can be used beyond the limits of its own territory.

* * * * *

"If this be so (viz. that the remedy is by all creditors against all stockholders), we perceive at once strong reasons why such a bill should be brought in the state which created the corporation, and where the same is located by the express terms of its charter, and where its place of business is."

Miller v. Smith, 66 L. R. A., p. 473, was decided in the courts of Rhode Island. It was brought by the creditors of the State Bank of Monte Vista, the same bank which these complainants are said to be creditors, against another stockholder of said bank. The head note is as follows: "The courts of the state of a stockholder's residence will not take jurisdiction of a suit by one creditor of the corporation on behalf of all to enforce his statutory liability to contribute towards the payment of the corporate debts in advance of any judicial determination of his proportionate liability, where the corporation was created in another state, the laws of which contemplate only a *pro rata* contribution to debts, to be enforced in an equitable proceeding against all stockholders in which

the rights and liabilities of all parties can be adjusted at once."

In commenting upon *Zang v. Wyant* it was said "The Court there distinguished two classes of statutes imposing upon stockholders liabilities beyond their subscriptions for stock for the debts of the corporations. One class imposes a primary and direct liability, such as a member of a copartnership is subject to towards the creditors of the firm, and another class provides only for contributions to a fund to be distributed by a court of equity among the creditors generally. The Court adopting the view taken by the Supreme Court of the United States in construing a similar statute in Terry v. Little, 101 U. S., 216, and by the Court of Appeals of New York, in *Pfohl v. Simpson*, 74 N. Y., 137, expressly places the statute under consideration in the second class."

"If the construction placed upon its own statute by the Colorado Court is correct its conclusion as to the remedy is unquestionable. * * * Courts which carry the practice of interstate comity to the furthest limit, agree that, where the obligation of the stockholders is secondary to that of the corporation, and proportional to that of other stockholders, it will not be enforced in other jurisdictions unless the equities between all stockholders and all creditors can be administered." Upon this proposition numerous citations are made. Among them are *Bank v. Sayward*, 86 Fed., 45, in the U. S. Circuit Court for the district of Massachusetts, a suit brought by a creditor of an Ohio

corporation against stockholders residents of Massachusetts. The bill was dismissed by Judge Holt, who said, "A bill in equity cannot be maintained by a creditor to enforce the liability of a stockholder in a corporation organized under the laws of another state," and quotes the words of Chief Justice Field in Post & Co. v. R. R. Co., 144 Mass., 345, who said, "This Court does not take jurisdiction of a suit to enforce this liability of stockholders in a foreign corporation, not because it would be a suit to enforce a penalty, or a suit opposed to the policy of our laws, but because it is a suit against the foreign corporation, which involves the relation between it and its stockholders, and in which complete justice only can be done by the courts of the jurisdiction where the corporation was created."

The demurrer was sustained by the Rhode Island court.

Bates et al. v. Day et al., 198 Pa., 513, 48 Ct., 407, decided by the Supreme Court of Pennsylvania, holds that the corporation and all stockholders must be made parties to a suit in equity brought by the creditors of a Colorado bank to enforce the statutory liability of stockholders created by the statute invoked in the present case.

The opinion quotes with approval the conclusion of the Court in the case of *Elkhart National Bank v. Northwestern &c. Loan Co., 87 Fed., 252*, which was a suit brought by a creditor of the loan company, which had been adjudged insolvent in Minnesota, under the laws of which state it was organized, against some of its stockholders in Pennsylvania, alleging that they

were each liable to an amount equal to the par value of the stock to make up a deficiency in the assets to pay debts and that such deficiency existed. The bill was dismissed; the Court saying, "we are now called upon to decide whether the company and other resident stockholders are necessary parties to the litigation. This is the only question presented. * * * To enable the Court to make a decree, it must take in account, determine the amount of assets, the extent of indebtedness, and the names and situations of the stockholders, the number of shares held by each, and thus determine what each should contribute, if contribution is found to be necessary. Can it be done in the absence of the loan company and the non-resident stockholders? We are confident in the judgment that it cannot: First, because they are directly interested in the result; and second, because the defendants sued cannot protect themselves, and secure a just determination of their liabilities."

The cases cited with approval in the opinion in *Bates v. Day*, are *Cushing v. Perot, 115 Pa. St., 73,74, At. 447*; *Bank v. Adams, 1 Pars. Eq. Cas., 534*; *Bank v. Loan Co., supra*; *Bank v. Sayward, 91, Ged., 443*; *Erickson v. Nesmith, 4 Allen, 233*; *McLaughlin v. O'Neil, 7 Wyo., 187, 51 Pac., 243.*

In *Mc. Laughlin v. O'Neil, supra*, the Court said, *inter alia:* no inquiry to which our courts in the present case could resort would result in any ascertainment of the indebtedness of the corporation which would at all affect or be binding upon it or its assigns, its other stockholders or any of its creditors who do not voluntarily

submit themselves to the jurisdiction of the Court The appearance of the creditors cannot be secured by process unless they are found within this state. Should our courts undertake to ascertain and determine the amount of the deficit over the corporate assets and the character and extent of the corporate obligations, the same matters in another suit in Utah or elsewhere against other stockholders might be determined differently, and the responsibility of the stockholders might not in fact be equal and ratable. It is urged that no such result is possible in the case at bar, as the allegation of the petition discloses such a large deficiency as to require, in any event, the whole sum of the responsibility of every shareholder. The trouble with that argument is that the allegation concerns a fact which, before a stockholder should be called to account, must cease to be a matter of averment, and must rest in judicial determination.

" The demurrer admits the fact only as it is alleged. The corporation is not a party to this suit. Its appearance and that of its foreign assignee cannot be enforced in this state. The only possible effect which the judgment of our courts in the present case could have, if the theory of the plaintiff should prevail, would be to bind and become conclusive upon the defendant, the plaintiff and those creditors who voluntarily appear in the suit (and but one has done so) or perhaps those who should accept from the plaintiff a proportion of the proceeds of any judgment against the defendant."

In the case of *Young v. Farwell*, 139 Ill., 236, the Court held: Head Note :—"A creditor of an insolvent corporation organized under the laws of another state must first seek a remedy in the courts of that state and ~~they~~ have authoritatively determined the respective relations of creditors and stockholders of the corporation toward the corporation and toward each other, and then, if it shall become necessary, their rights as respects stockholders domiciled in this state may be enforced in our courts." In the opinion is cited *Gregory v. N. Y., L. E. & W. R. R.* 40 N. J. E., 38, wherein our Court of Chancery refused to take jurisdiction of a cause brought by stockholders of a foreign corporation against that corporation and another to which it had leased lands, &c., all of which were out of the New Jersey jurisdiction, seeking relief in regard to the transactions of those corporations with each other; the chancellor said, "if relief be granted in this case, the decree must order that the money recovered be paid over to the Buffalo, Bradford & Pittsburgh Railroad Company, to be administered by its board of directors. But that company is a foreign corporation, and it may not appear in this suit; and if the Erie Company should be ordered to pay the money over to it, how can this court secure the distribution of it among the stockholders of the latter company, being out of the jurisdiction?"

In *Tuttle v. National Bank of the Republic*, 161 Ill., 497, it is said, "The important question to be here determined is whether the courts of this state will, in any form, take jurisdiction of a

question arising as to the respective relations of creditors and stockholders of a corporation of another state, where a special remedy is provided by statute, before there is a determination by the courts of such state of the just proportion of the corporate indebtedness to be borne by solvent stockholders of such corporation. No decree of the courts of this state could result in taking account and dissolving a corporation of another state. It is for the courts of that state to enter a decree stating the account, winding up the affairs of the corporation and determining the relation of the stockholders, creditors and corporation to each other."

In New York a suit in equity, to which the corporation and stockholders are parties, for the purpose of settling the affairs of the corporation and fixing the individual liability of the stockholders, is established as the proper proceeding by along line of cases of which *Pfohl v. Simpson, 74 N. Y., 137*, is expressly approved by the Colorado Court in *Zang v. Wyant.*

In *Marshall v. Sherman*, 148 N. Y., 21-22, the Court says: "But if, under any circumstances the action could be maintained in this jurisdiction, it must be in such a form and by such modes of procedure as like liabilities created under our own statutes are enforced against our own citizens.

"There is no reason why the plaintiff should be permitted to enforce his debt in this jurisdiction against a citizen of this state in a form of action different from that which a creditor of a

domestic corporation may prosecute against a domestic stockholder. It is quite well established that in a case like this an action at law by a single creditor against a single stockholder for the recovery of a specific sum of money cannot be maintained in our courts under our statutes declaring the liability of stockholders. In such cases the liability must be enforced in equity, in a suit brought by or in behalf of all the creditors against all the stockholders, wherein the amount of the liability and all the equities can be ascertained and adjusted." * * * "It would be manifestly unjust and unfair to him (the stockholder) to pay this claim and turn him over to another action, perhaps in another state, or in many states, in order to obtain the contribution which the law evidently contemplates. All these questions should be settled in one proceeding, or in one action, and that at the domicile of the corporation. * * * An equitable result can be accomplished only by the courts of the jurisdiction where the corporation was created."

Kimick & Co. v. Iron Works, 25 W. Va., 184, was a suit in West Virginia in behalf of all the creditors of an Ohio corporation against the foreign corporation and all shareholders residing in West Virginia. Bill alleged that all the property of the corporation had been sold under proper judicial proceedings in Ohio and the proceeds applied to reduction of debts, leaving a large deficiency. By statute stockholders were liable in addition to their stock in amount equal thereto to the creditors for debts of the corpor-

ation ; assignment by corporation ; entire assets when collected by assignee will not exceed $1,000 over costs, but trust not settled. Suit had been brought in Ohio against the same defendants and others, and decree that debts exceeded all the sums for which stockholders were liable. All stockholders were made parties except those in Ohio against whom a decree had been taken in that state. The corporation was made a party, but not the assignee.

The Court held that the liability was contractual, that it was for the benefit of creditors and the corporation had no control over it ; that in a suit to enforce it the corporation was a necessary party and because the West Virginia Court had no means of bringing it, its stockholders, officers or agents, residing out of the state, within its jurisdiction, it refused jurisdiction of the subject matter.

The same Ohio statute was before the Court in Cleveland v. Kent, 87 Hun., 329, and the Court refused to assume jurisdiction because of its inability to bring the foreign corporation and non-resident stockholders and creditors into Court.

The recent case of *Abbott et al. v. Goodall et al.*, 60 At. Rep., 1030, was decided by the Supreme Judicial Court of Maine, affirming a decree sustaining a demurrer to a bill brought by creditors of this same Monte Vista bank against such stockholders as resided in Maine. The court held that a suit in equity against

Maine stockholders alone would not be sustained ; that as stockholders were liable to contribute *pro rata* only, the corporation was a necessary party ; the courts of Maine having no jurisdiction of the corporation, the action could be brought in Colorado, only, and that as to practice and procedure the law of the forum governed.

POINT III.

A court of equity has no jurisdiction of the cause presented by the bill of complaint, because it seeks to recover a penalty.

In the court below the learned Vice Chancellor said :

"It is a familiar principle that courts of equity will not enforce penalties. The complainants in this suit do not present their case as one seeking to enforce penalties, yet their bill of complaint as framed by insisting upon the severed liability of each defendant to pay as an absolute sum double the par value of his shares, the total of which is far in excess of the bank's unpaid debts, and omitting to bring in as defendants all the shareholders, and to ~~make~~ invite an accounting and the ascertainment of the proportionate sums which each should respectively pay to satisfy the bank's unpaid debts—in effect seeks to enforce against each defendant the payment of a fixed sum, wholly ~~unstated~~ unrelated and out of all proportion to the amount needed to pay the bank's debts.

In short to enforce a penalty. This defect of the bill of complaint is apparent upon its face and affects this court's ability to make any decree in this cause which will be just and equitable."

That the money which complainants ask the court to decree payment is claimed upon the assumption of the bill as a penalty is apparent upon consideration of the amount of money claimed by the bill and its relation to the indebtedness of the bank.

Total claimed liability of stockholders: 800 shares at $200		$160,000
Total debts due creditors	$70,000	
Excess claimed [by way of penalty]	90,000	
	$160,000	$160,000
Defendants' liability on 150 shares at $200		$30,000
Their true proportion of liability	$13,125	
Excess claimed [by way of penalty]	16,975	
	$30,000	$30,000

It is to be observed that although the statute does not make the stockholders liable, upon the insolvency of the bank, in all events to pay to creditors an amount equal to double the value of their stock; and that no such construction is put upon the statute by the court in *Zang v. Wyant*, yet these compainants assert that the statute should be construed by this court to

mean that stockholders, upon taking stock, guaranteed all creditors that the bank would pay its debts, or that in default they, the stockholders, would pay creditors an arbitrary sum which had no relation in amount to the sum really due them; or, that stockholders obligated themselves to pay creditors a sum equal to twice the par value of their stock at such time as the bank should become insolvent and have substantially exhausted its assets, upon condition that their obligation should be void if the bank paid creditors what it owed them.

Such an obligation is an undertaking to pay a penalty.

* * * "The same test, in substance, determines the nature of the provision by which the performance of some collateral act is secured. If the act secured be single, and the compensatory damages justly resulting from its non-performance can be ascertained with reasonable certainty, and the stipulation bind, the debtor party to pay a fixed sum larger than such amount of damages, then the stipulation is a penalty." 1 Pom. Eq. (2d ed), §436.

In determining whether the remedy sought by the bill of complaint is obtainable in equity it is important to distinguish between those penalties against which equity affords relief, and those which, arising under statutes, are said to be penal to the debtor and remedial to the creditor and which perhaps, under certain circumstances, are enforceable in equity. Ordinarily a penal law is said to be local and to be enforceable only within the jurisdiction of the

sovereign power by which it was promulgated. But laws which give a remedy in favor of the person injured against him who committed the injury are said not to be penal laws so far as international law is concerned in determining the jurisdiction of courts.

Upon ~~the~~ this principle this Supreme Federal Court in *Huntington v. Attrill*, 146 U. S., 657, held that a statute of New York making the officers of a corporation who sign and record a false certificate of the amount of its capital stock paid in, liable for all its debts, was not a penal law in the sense that it could not be enforced in a foreign state, and therefore reversed the Supreme Court of Maryland which had refused to give plaintiff judgment in his suit upon a judgment recovered in New York. The court said, however, "If a suit on the original liability under the statute of one state is brought in the court of another state the constitution and laws of the United States have not authorized its decision to be reviewed by this court."

But in *Derrickson v. Smith*, *3 Dutch.*, *166*, our own Supreme Court held a New York statute making its trustees jointly and severally liable for the debts of the corporation, upon failure to file an annual report of their condition, to be a penal statute and not enforceable in New Jersey.

In *Kennelly v. Leary*, *38 Vr.*, 435, it was held that while local statutes of ~~our~~ state can have no operation in another, yet "a statute which

gives a remedy for an injury, against him by whom it is committed, to the person injured, and to him alone, and limits the recovery to the mere amount of the loss sustained, belongs clearly to the class of remedial statutes" and accordingly permitted one who had bet on a dog fight in New York to recover under the New York statute the money paid over to the winner.

Both these actions, however, were brought in a court of law, and for the exact amount of the respective debts due the plaintiffs. The case at bar is not within the rule, even at law, in two respects : first, the defendants can hardly be conceived as having done the complainants an injury, as in *Kennelly v. Leary*, supra, and, second, the amount sought to be recovered is not limited to the mere amount of the loss sustained.

It is submitted that a court of equity will not entertain jurisdiction of the cause of action as stated in the bill.

POINT IV.

The present proceeding cannot be maintained because it is prohibited by Chapter 50 of the Acts of the Legislature of New Jersey, Approved March 30, 1897.

The act referred to is a supplement to "An act concerning corporations" (Revision of 1896).

The pertinent section is in the following language:

2. No action or proceeding shall be maintained in any court of law of this state against any stockholder, officer or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this state other than in a nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its stockholders shall be necessary parties."

The statute just quoted prohibits any action or proceeding *in any court* of this state, *against any stockholders*, to enforce any *statutory personal liability* of such stockholders, whether deemed penal or contractual, upon any debt of such corporation, if such liability be *created* by or *arise* from the *statutes or laws* of any *other* state; *unless* such action or proceeding be one in the nature of an equitable accounting for the proportionate benefit of all parties interested, to which the corporation, its legal representatives, if any, all the creditors and all the stockholders shall be necessary parties.

The present case plainly comes within the class prohibited by the statute and is not within its proviso. If the legislature had authority to enact this law, the complainants cannot maintain the present proceeding.

If the remedy provided by the Colorado statute be deemed penal, it cannot be enforced in the courts of this state. *Minor, Conflict of Laws,* §*10. Derrickson* v. *Smith,* 3 *Dutch.,* 169.

Assuming that the remedy now sought by complainants was ever attainable by the present form of procedure in the courts of New Jersey, the legislature nevertheless had power to deprive them of it if another was given ; as is the case under the present statute.

"* * * The *lex fori* governs all matters relating to the procedure in the trial of causes, including the proper parties, plaintiff and defendant. * * * Indeed, every thing that pertains to the remedy." Minor, Conflict of Laws, §206.

In *Newark, &c., v. Forman & al., 33 N. J. E., 436,* it was held that the act of 1880, P. L., 225, providing that in foreclosure proceedings thereafter commenced no personal decree for deficiency should be taken, applied to mortgages given before its passage and was not unconstitutional, another remedy remaining.

In Baldwin v. Newark, 9 *Vr., 158,* Baldwin, prior to 1873, was awarded damages for the taking of his land and sued the city on a city warrant given for the amount thereof. Under

the provisions of a legislative act of that year the city set off an assessment of benefits against Baldwin, which set-off was allowed. He contended that the award of damages and assessments of benefits being ratified prior to the act of 1873, that statute was improperly permitted to govern the case. The court said, "The indebtedness of the city to the plaintiff for the damages awarded was not impaired or affected by this legislation. The form of the remedy, merely, was altered. The power of the legislature to change the form of the remedy where no substantial right under the contract is impaired, is too well settled to need discussion. Rader v. District, 7 Vr., 273. 2 Story on the Constitution, §1385."

In *McMillan v. Sprage, 4 How.*, (Miss.) *647*, an act requiring that the makers and endorsers of a note *shall* be sued together was held constitutional, "laws changing remedies for the enforcement of legal contracts, or abolishing one remedy where two or more existed, may be perfectly valid, even though the new or remaining remedy be less convenient than that which was abolished, or less prompt and speedy. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct. * * * [Sturges v. Crowninshield, 4 Wheat., 122, 200 per Marshall, Ch. J.] Cooley's Const. Lim., p. 406."

Assuming the obligation of defendants to be contractual, the act of 1897 leaves their obligation unimpaired. They are still individually

liable, if at all, to double the value of their stock, to contribute proportionally to a fund to be raised for the benefit of all the creditors, only the form in which their liability is to be fixed is affected by the statute. It being "well settled that a statute or constitutional provision of a state has no operation, *ex proprio vigore*, beyond the limits of the state, although, as a matter of comity, a liability created thereby, may and will, under some circumstances, be recognized and enforced by the courts in other states," (Clark & Marshall on Corporations, § 825 b.), it is submitted that the statute in question is declaratory of the public policy of this state touching proceedings brought to enforce rights arising under statutes similar to that of the state of Colorado now relied upon by complainants; and that the state has absolute power in determining such questions of policy. As was said by the court in *Higgins v. Central New England R. Co., 155 Mass., 180*, and quoted approvingly by the Court in *Huntington v. Attrill*, 146 U. S., 657, "in cases of other than penal actions, the foreign law, if not contrary to our public policy, or to abstract justice or pure morals, or calculated to injure the state or its citizens, shall be recognized and enforced here, if we have jurisdiction of all necessary parties, and if we can see that consistently with our own forms of procedure and law of trials, we can do substantial justice between the parties. If the foreign law is a penal statute, or if it offends our own policy, or is repugnant to justice or to good morals, or is calculated to injure this state or its citizens, or if we have not jurisdic-

tion of parties who must be brought in to enable us to give a satisfactory remedy, or if under our forms of procedure an action here cannot give a substantial remedy, we are at liberty to decline jurisdiction."

POINT V.

The bill is multifarious.

The bill proceeds upon the theory that complainants' claim is joint, though what is really set up is a several debt due each of them.

The charge is that the defendants "are severally and individually indebted to your orators in double the amount of the par value of the stock * * * owned by them respectively."

Assuming that complainants have a right to proceed in equity against any one of the defendants, there is no reason shown for joining them in one suit. There is no reason why any one of these defendants should be present in court in order that substantial justice should be done in a proceeding against the other, if it be taken for granted that all stockholders are not necessary. A party cannot be joined as a defendant with others at the mere caprice of the complainant. There must be some discovery required of him; an ascertainment of the amount due from him in order to fix the liability of his co-defendants, or some other requirement of equity procedure shown to exist in order to justify the complainants' bill.

In the Court below the learned Vice Chancellor said: "The bill of complaint contains no

allegation of facts which justify the joining in one suit these several and respective claims against many different persons. No concert of action by the defendants is alleged; no obligation common to all defendants is set forth, nor is there any tie suggested by which the claims of the complainants against all these defendants should be joined, except that it will prevent a multiplicity of suits. But that would be true if the complainants should join in one suit all the unrelated claims they might have against any number of defendants. The complainants say each defendant separately owes the whole sum which he is asked to pay, but they state no reason for joining in one suit these seven several and distinct and apparently (so far as the bill shows) unrelated claims."

POINT VI.

The names of the persons complainant are not accurately set forth in the bill, and their residences are not definitely given.

As to the residences of the complainants all that can be learned from the bill is that they are of Creede in the County of Mineral; Monte Vista, in the county of Rio Grande, and Hooper, in the County of Costilla, in the State of Colorado, (Case, p. 6). Who, of the complainants, reside in the first place, who, in the second, and who, in the third, can not be determined.

A very large number of the natural persons who are complainants, are described by their

surnames with initals only preceding, who or what "Berryman & Dean" are or is, is not disclosed. Criticisms of a similar character are applicable to large numbers of the parties complainant.

"It is not only necessary that the names of the several plaintiffs in a bill should be correctly stated, but the description and place of abode of each plaintiff must be set out, in order that the court and the defendants may know where to resort to compel obedience to any order at process of the court, and particularly for the payment of any costs which may be awarded against the plaintiffs, or to punish any improper conduct in the course of the suit." *1 Dan. Ch. Pl. & Pr. (6th Am. Ed.), p. 357. See Story Eq. Pl.*, §*26*.

Initials cannot be used for the Christian names of parties to action.

Eberson v. Richards, 13 Vr., 69. Dittmar Powder Co., v. Leon, 13 Vr., 540.

POINT VII.

The parties made defendants as "heirs at law and devisees" of Anna Basch, "heirs at la w and devisees" of Edo Kip and "heirs at law and devisees" of Moses E. Worthen, cannot be proceeded against in equity for the matters in complainants' bill; nor is any liability on their part shown in the bill of complaint.

The charges of the bill as to the defendants Arianna Van Houten, Ella K. Goodlatte, John M. Kipp, John E. Kipp and Mary Kipp as heirs at law and devisees of Edo Kipp; Isaac Basch, Marion Feder, James S. Basch, Carrie Basch, Matilda Basch and Emma J. Basch, as heirs at law of Anna Basch; Irene C. Mansur, Harry Worthen, Frank Popple, Jr., Bessie Popple and The Passaic Trust and Safe Deposit Company, trustee, as heirs at law and devisees of Moses Worthen, are substantially alike. They charge that the ancestor at death was "seized of certain messuages, lands, tenements and hereditaments, leaving a last will and testament"; that the will was admitted to probate; that the ancestor left surviving as her heirs at law and devisees of said messuages, etc., certain of the defendants, naming them, and charging that the said heirs and devisees are severally and individually liable for the obligation of their ancestor.

It is submitted complainants cannot recover against them for the following reasons:

(a) Because there can be no recovery against "heirs at law and devisees," upon an obligation of the ancestor of the character set forth in the bill.

(b) Because complainants' remedy, if any they have, is at law.

(c) Because Edo Kip and Moses E. Worthen were under no obligation in their respective lifetimes to complainants, and therefore no liability was cast upon their devisees.

(a) At common law, the land of a deceased

debtor was not liable for his debts or obligations. The heir was only bound in case the ancestor had executed an obligation expressly binding his heirs. But the devisee could not be reached. To remedy this defect parliament passed an act entitled "An act for the relief of creditors against fraudulent devisees". This act was so narrow in its terms, confining the remedy against the devisee to an action of debt, that the King's Bench in *Wilson v. Knubley*, 7 *East.*, *128.* held that an action of covenant does not lie upon the statute (3 W. and M., Ch. 14,)against the devisee of land to recover damages for a breach of covenant made by the devisor; but the remedy thereby given is confined to cases where debt lies".

The New Jersey statute entitled "An act for the relief of creditors against heirs and devisees," passed March 7, 1797, was much broader. Its language was "All and every creditor and creditors, whether *by simple contract or specialty*, and whether the heirs are mentioned therein or not, shall and may, by virtue of this act, have and maintain his, her or *their action and actions against* the heir and heirs at law of any debtor who hath already died, or shall hereafter die" etc. Consequently because actions, without any limitation as to their kind, were given a creditor, and because the Court held the word debtor in the statute, to have a broad and not a technical meaning, our Supreme Court, in *Ins. Co. v. Meeker*, *8 Vr.*, *282*, held, that the creditor might maintain an action of covenant against the devisee for a breach of the ancestor's covenant against encumbrances.

Subsequently one who had endorsed a promissory note and died before maturity was held to be a debtor within the meaning of the statute. *Dodson v. Taylor, 24 Vr., 205.* The Court of Errors in that case expressly stated that it reached its conclusions without giving to the act so broad a signification as was given in *Ins. Co. v. Meeker, supra.*

But while a creditor may sue under the statute either in debt, in covenant or assumpsit, yet the courts have never gone further than to recognize a right of action in such creditors only, as depend upon a simple contract or a specialty.

The complainants in this case claim neither upon simple contract nor upon specialty; their reliance is upon a statute of a foreign state which they claim entitles them to recover from these defendants a sum of money largely in excess of any debt alleged to be due from their respective ancestors to the complainants. It is as though a plaintiff sought to compel the heir to pay the penalty of his ancestor's bond.

(b) That the complainants' remedy is at law against the heirs and devisees of the debtor, and that a court of equity will not extend its aid is well settled.

"Heirs, under our statute, are, to the extent of the value of lands descended, liable for the engagements of their ancestor, even to the extent of being answerable for damages resulting from a breach of their ancestor's covenant. *New Jersey Ins. Co. v. Meeker, 8 Vr., 282.* But their

liability is purely legal, and enforceable only by an action at law." *Mutual Life Ins. Co. v. Hopper, 16 Stew., 389, affirmed 17 Stew., 604.*

Edwards v. McClave, 10 Dick. 151, affirmed, ibid, 822, was a bill to compel the payee of a promissory note, who had pledged the same without endorsement to endorse it, also to charge the lands descended to the heirs at law of the maker, who had died before the note's maturity, with payment of the note and to sale of the lands for that purpose. Vice Chancellor Emery said: "But * * * taking *Nelson v. Hughes* to be an authority for proceeding to final decree for the payment of the note against the maker in the suit in equity to compel the endorsement, the case does not reach the main point now involved, which is whether the obligation of the deceased ancestor on the note can be enforced by a bill in equity against his heirs-at-law, either as a personal debt or as a charge on the lands descended. And I am of opinion that no such liability, either by personal decree or by charge on their lands, can be enforced against the heirs on this bill. The reason is that the obligation of the heirs for the payment of the ancestor's debts of this character is a purely statutory liability, arising under the act of March 7th, 1797 (Rev. p. 476), and it has always been held that under this statute the liability of heirs is purely legal and enforceable only by action at law." The demurrer to the bill was sustained. This court affirmed the decree for the reasons given in the Court of Chancery.

One who proceeds in equity to have a debt of

the ancestor paid out of a devise must show some reason for charging such devise, which would be entitled to exoneration by the personal estate of the ancestor. *Edwards v. McClave, supra*; *Dodson v. Sevars, 8 Dick., 348.*

In this case it does not appear that there is any deficiency of personal assets to discharge the obligations of the deceased stockholders, nor is there any other occasion for the exercise of the equity jurisdiction indicated.

(c) Edo Kip died *February 16, 1899.* (Case, p. 23.)

Moses E. Worthen died *December 26, 1897.* (Case p. 25.)

The bank became insolvent and made an assignment *June 15, 1899*

When Edo Kip and Moses E. Worthen died, the bank was solvent and they owed no debt to the complainants; consequently their heirs and devisees are not chargeable.

The obligation of stockholders in Colorado banks is for this purpose like that of a surety, and under the statute, heirs and devisees of a surety are not liable for a debt accruing after his death. This was held in *Farley v. Briant, 3 Ad. & E., 839*, where the heirs and devisees of one who was surety for payment of rent by the lessee upon a lease for lessor's life were ~~such~~ sued for rent accruing after the death of the surety.

Farley v. Briant was distinguished in *Dodson v. Taylor, 24 Vr., 200*, from a case where it was sought to hold the heirs and devisees of an endorser of a promissory note who died before maturity of the note. Justice Dixon said, "The

facts of that case are plainly distinguishable from that now before us, for the debt there in suit did not exist when the surety died, and it was then uncertain whether it would ever come into existence, as the death of the lessor might end the term before the rent accrued. But in the present controversy the debt did exist when the endorser died, and was sure to become due by the mere lapse of time. No contingency attached to the debt itself. The money represented by the promissory note would be called a debt, with as much precision of statement before the maturity of the note as afterwards."

When Edo Kip and Moses E. Worthen died there was no debt due the creditors by them, nor was there any certainty that there ever would be. It was a mere contingency.

Respectfully submitted.

HENRY C. WHITEHEAD,

WILLIAM I. LEWIS,

Of Counsel with Appellees.

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IN CHANCERY OF NEW JERSEY.

To his Honor William J. Magie, Chancellor of the State of New Jersey :

Humbly complaining shows unto your Honor your orators Alfred L. Miller, Stephen W. Tracy, Dan Workman, W. O. Statton, Phoebe C. Smith, C. B. Abbott, American Central Insurance Co., A. R. Armstrong, B. F. Ayers, C. W. Alexander, J. W. Anderson, Edward Arps, Robert Atwood, Atkinson Lumber Co., W. S. Armor, C. J. Auckerman, John Appel, J. H. Baxter, Bank of Del Norte, H. M. Bennett, W. C. Beiger, Chas. S. Barnes, Beal Tightner Co., W. A. Berry, Rev. E. E. Bean, Nellie Bean, Treas. ; Mary E. Ayers, Successor; A. J. Butler, Chas. Bessey, Bachelor Gro. Co., George Booth, Bachelor Lease, W. G. Boyle, Mgr. ; Chas. E. Brown, Wm. Bader, W. T. Barnett, M. Born, Berryman & Dean, W. G. Boyle, E. H. Blunt, E. E. Broade, Burnham, Hanna, Munger & Co., Brandt & Elliott, E. O. Butler, W. C. Buck, Treas. ; Buck & Son, Geo. A. Bradburn, A. M. Burson, C. Y. Burson, C. Y. Burson, H. A. Butterfield, O. H. Blank, M. Ellen Bloom (Hutton) M. M. Buck, Mary Bechtel (Mamie), Herman Broeske, Bailey & Brooks, R. W. Cary, A. M. Collins & Co., A. M. Collins & Co., Colorado Nat. Bank, C. T. Christenson, Creede Furn. & Und. Co., D. W. Creason, Continental Nat. Bank, Mae B. Carey, Continental Nat. Bank, O. W. Cann, Colo. Valley Land Co., W. H. Cunningham, Mgr., John E. Coulson, John E.

Coulson, Colo. Valley Land Co., Wm. Couch, Creede Furn. & Und. Co., Conn. Fire Ins. Co., Charles M. Corlett, Computing Scale Co., B. F. Carver, Greede Benevolent Soc., O. L. Corbin, Creede Lumber Co., C. F. Chapman, A. G. Crandell, Edward Cotten, Chapman Bros., D. M. Cox, Wm. Cochran, Wm. O. Chadd, John Carlson, Charlotte Dorris, Denver Nat. Bank, I. A. Dunham, The J. J. Douglass Co., L. C. Darling, Treas.; Frank Donnings, Dorris & Son, W. C. Dotson, Albert C. Dean, A. W. Derrick, J. T. Dunn, M. L. Duncan, Wm. C. Dwigans, J. C. Durye, C. Dort, Bertha K. Elliott, Riley M. Edwards, C. Erickson, J. Elting, E. L. Edgerton, John V. Farwell, Frank Fulton, Lazard Freres, Lillian B. Ford, First Nat. Bank, John Fishback, Mark Franklin, Fidelity Savings Ass'n., Frank & Stump, Dr. E. L. Foster, First Nat. Bank of Pueblo, First Nat. Bank, Frank Gillett, Nelse Goodman, German Savings Inst., W. L. Guinn, Jacob Gable, Jacob Gable, Joseph Goldmitzer, E. L. Hotchkiss, Alonzo Hubbard, A. Hereid, C. H. Heckler, Hartman Trunk Co., A. R. Hubbard, John Houck, J. J. Hosselkus, R. B. Halferty, E. Brown Herrick, Agt.; Richard J. Hillier, H. G. Henderson, O. J. Hogerty, Mrs. A. M. Herkert, Henkel Duke Mer. Co., Hatcher & Wood, H. W. Hazlett, Chas. Heins, Treas., Samuel Honing, Samuel Honing, Treas.; D. E. Hopkins, Elizabeth Hoopes, Hooper Grocery Co., Richard S. Hutton, J. J. Hosselkus, Herman Heckt, John Hecker, F. C. & L. R. Hitchcock, A. E. Headlie, W. O. Hurt. Silas J. Hall, P. S. Hazlett, W. L. Harrison, A. J. Hack, C. V. Henkle, T. E. Ickes, John Irwin, A. W.

Jermy, James January, J. W. Jacobs. Clara M. S. Jacobs, Thomas W. Jesse, Ida M. Johnson, Morgan Jones, C. A. Jones, C. A. Jones, Albert Johnson, G. G. Johnson, Mary A. Kimball, estate, Ernest M. Goodall, Admr.; Kelly Shirt Co., Perry Kolander, Knauber J. Lithograph Co., Mrs. R. B. King, Mrs. Jennie Kipp, Kent & Stuchfield, Wm. Kennedy, J. W. Kenton, W. T. Kirkpatrick, C. J. Kramer, Kramer & Miller, James Koello, F. A. Keyser, Wm. La Cass, R. L. Liddy, T. J. Lakenan, W. G. Lamb, F. L. Likens, Lillis Lovell, L. J. Leander, Olof Larson, Liverpool & London Globe Ins. Co., J. W. Lincoln, J. D. Lewis, Hiram H. Marsh, M. J. Moses, Mrs. A. D. Moak, M. J. Moses, Monte Vista Labor Exchange, Mercantile Nat. Bank, Lizzie McIntosh, Metropolitan Nat. Bank, Mrs. M. L. Monroe, H. H. Marsh, Wilson McLean, McCord, Bragdon, Gro. Co., J. F. Mongle, C. F. Meyer, R. B. McNellis, George Martin, Chas. Maag, A. H. Major & Co., A. H. Major & Co., A. H. Major, Marvin Coal & Lumber Co., Albert L. Moses, assignee ; David H. McCullock, J. D. Myers, A. L. Miller, Treas. ; Cyrus Miller, E. W. Martin, A. L. Moses, John Mooney, Rosa Moses, (Lahr), Benj. A. Murphy, Katie Mosier, Katie Mosier, Treas.; J. C. Mayfield, J. W. Miles, David Miles, Mutual Life Ins. Co., N. E. Morgan, J. W. McDonald, F. W. Miles, James McFadden, S. T. McClure, W. A. Mitchell, John D. Murray, R. McLeod, R. R. Newton, Treas. School District No. 27 ; Nat. Fire Ins. Co., Geo. Dornin, Mgr. ; E. A. Norland, Nat. Bank of Commerce, T. H. Newton, Niagara Fire Ins. Co., Officer & Burrows, John Owsley,

L. L. Orton, John Olson, M. F. Powell, Phoenix Ins. Co., James Paterson, James Paterson, A. D. Parsons, R. G. Penniston, James D. Pilcher, James D. Pilcher, G. W. Pitman, Parlin & Orendorff, Providence Washington Ins. Co., Thos. R. Pace, Mary Peachey, C. A. Quiram, C. E. Reese, Rio Grande & Lariat Ditch Co., M. Regan, Chas. B. Rouss, C. W. Roe, Ranchmen's Mill & E. Co., Rosbrough & Co., John D. Runyan, Miss Edna Rosbrough, Alvin H. Rouse, E. H. Shotwell, Sears, Roebuck & Co., C. C. Stutsman, Mrs. E. A. Shotwell, Sweet, Orr & Co., Rev. G. W. Statton, H. Schiffer & Co., Omie Stevenson, Treas.; Lydia E. Stillman, Shiffer & Bro., W. F. Schooler, Robert L. Smith, Mrs. Jennie Schultz, J. F. Smith, John H. Shaw, Comr.; F. W. Sharp, J. W. Skinner, Wm. C. Sloan, W. C. Sloan, Treas.; John P. Solis, by C. M. Corlett; Wm. A. Sutton, Staley Bros., M. M. Sutley, Edith M. Simpson, H. H. Snider, C. W. Shultz, C. W. Shultz, W. P. Smith, E. T. Skinner, Carlos Stevens, B. F. Stone, St. Louis Glass & Queensware Co., T. D. Shilling, T. D. Shilling, John D. Shields, Ed. Swanson, D. W. Taff. Treas.; L. W. Bellamy, Succr.; Tompkins Bros. Hdwe. Co., Trustees Lodge, No. 55, I. O. O. F., part of No. 62; Union Nat. Bank, M. E. Vaughn, Frank P. Waterhouse, J. H. Winne, S. C. Wells, W. S. Wintermute, Olaf Westland, M. V. B. Wason, Sadie Wake (Peartree), W. J. Watkins, Wm. Wilson, J. W. Westlake, T. A. Wheeler, Treas. W. O. W.; W. D. Wilson, W. D. Wilson, Weiss Chapman Drug Co., Will J. Wood, P. M. U. S.; Frank Woodruff & Stump, H. S. Witherbee, World

Mfg. Co., Chas. Ydren, J. E. York, Fred Youck, C. A. Young, Jacob Youck, Wm. Youren, Fred Youck, S. E. Zollinger. Amethyst Machine Shop, Mrs. C. T. Boyle, John L. Brown, Emma Blossom, Geo. Boucher, Brandt & Elliott, H. B. Bruner, Joe Butterworth, Abe Bledsoe, W. A. Chapson, Thos. Cullen, L. H. Carter, P. M. Cockrell, Frankie Clark, T. J. Cunningham, D. G. Craig, A. W. Casey, Joe Cotton, Ed. Cotton, Denver Exchange, Wm. Douglass, F. J. Dingman, Chas. O. Edstron, A. J. Eaton, C. E. Ewry Grocery Co., L. B. Farrar, Victor Freelove, F. C. Friedman, A. J. Fraiser, Newell Groves, H. Garrittson, Fred Groom, Emma K. Goad, D. J. Gibbs, F. B. Hubbard, L. D. Howell, Elbert Howard, Gilbert Hurd, J. W. Hess, A. M. Henderson, John Howe, E. M. Jackson, W. D. Jenkins, Gen. Mgr. ; C. C. Kerr, Oro. Kenton, C. M. King, Treas. ; Wm. Kernan; H. B. King Com. Co., L. J. Kempf, Henry G. Lang, Ella Lumbeck, Ella Logan, G. A. Meadows, E. R. Mosher, Merkt Bros., John Morris, Masked Venus Mine, W. K. Mains, L. D. Murphy, J. F. Morguson, Benj. Miller, Irene Maben, Ida Maben, Ethel Maben, Midland Savings & Loan Co., A. McPhee, W. A. Magill, Mayfield Bros., Nichols Packing Co., W. F. Newell, F. Oliver, C. W. Partin, J. W. Palmer, David M. Phillips, Emma Quigley, Nellie Sargeant, E. D. Smith, F. E. Soward, D. W. Soward, Soward Bros., Schlatter & Hess, J. N. Sanders, J. F. Smith, Roy Sloan, Appollonia Stone, Thompson Paper Co., Mrs. Monroe Thompson, W. P. Tuttle, F. M. Tiller, David Ulrey, P. Vidal, Vorhang Produce Co., Edward West, S. W. S.

Woods, C. C. Wilder, H. C. Wellie, L. C. Wellington, Lydia Wolfe, C. E. Walrous, L. E. Webb, E. H. Watson, John F. Walsh, Wells & Robinson, of Creede in the County of Mineral; Monte Vista, in the County of Rio Grande, and Hooper in the County of Costilla, in the State of Colorado, and that your orators are all the depositors in and creditors of the State Bank of Monte Vista in the County of Rio Grande, State of Colorado, aforesaid:

And your orators show that the State Bank of Monte Vista was and still is a corporation organized under the laws of the State of Colorado; that said bank was organized on the eleventh day of August, eighteen hundred and ninety, with a capital of thirty thousand dollars, divided into three hundred shares of the par value of one hundred dollars each; that on the sixth day of January, eighteen hundred and ninety-one, said bank increased its capital stock to eighty thousand dollars divided into eight hundred shares of the par value of one hundred dollars each.

And your orators further show that upon the organizing of said bank under the laws of Colorado as aforesaid said bank opened for business as a banking corporation at Monte Vista, in the County of Rio Grande, aforesaid, and that on or about the sixth day of January, eighteen hundred and ninety-one, and immediately after said increase was made in its capital stock said bank opened two branch banks, one at Hooper in the County of Costilla, called the Farmers' Bank of Hooper, and the other at Creede, in the County

of Mineral, called the Miners' Bank of Creede, in the State aforesaid, and that while the branch banks were known under the names aforesaid, they had no separate corporate existence as such, but did business under the articles of incorporation of the said State Bank of Monte Vista and were a part thereof and were one and the same bank, and that the use of different names as aforesaid was for convenience and to distinguish them from one another, and that said bank conducted a general banking business at the places aforesaid, viz.: Monte Vista, Rio Grande County; Hooper, Costilla County, and Creede, Mineral County, Colorado, from the dates aforesaid, until the fifteenth day of June, eighteen hundred and ninety-nine, when said bank became insolvent and on that day made an assignment under the laws of the State of Colorado and appointed one Norman H. Chapman as assignee.

Your orators further show that said assignee thereupon duly qualified and took possession of all of the property and choses in action of the said bank and has since converted the same into money and paid out the same to the creditors of said bank hereinafter set forth on pages eight to thirteen inclusive beginning with the creditor "C. B. Abbott" and ending with the creditor "S. E. Zollinger," under the direction and order of the District Court of that district, the same being the Twelfth Judicial District of the State of Colorado, and that nothing remains for distribution, all property and choses in action having been disposed of, converted into

money and disbursed by said assignee as aforesaid, and that by reason thereof said assignee has paid upon the indebtedness of said bank as of December fifteenth, eighteen hundred and ninety-nine, fifteen per cent. and as of December first, nineteen hundred and one, four and one half per cent. and that if any further moneys are recovered for the creditors it must be from the stockholders upon their stock liability.

And your orators further show that the creditors hereinafter mentioned on pages fourteen and fifteen beginning with the creditor, "Amethyst Machine Shop" and ending with "Wells & Robinson" have never received any dividend or payment whatever on account of the indebtedness of said bank to them.

And your orators further show that your orators deposited in said bank at different times from the organization of the same down to the date of said failure, which deposits were so made while the shareholders hereinafter mentioned were shareholders in said bank, and that the balances of said deposits remaining in said bank at the date of its failure were as follows:

Name and style of depositors.	Amounts.
C. B. Abbott	$43 37
American Central Ins. Co.	18 60
A. R. Armstrong	1,286 00
B. F. Ayers	2 75
C. W. Alexander	100 00
J. W. Anderson, treas	187 14
Edward Arps	56 82
Robert Atwood	700 00

Name and style of depositors.	Amounts.
Atkinson Lumber Co	47 52
W. S. Armor	367 85
C. J. Auckerman	41 70
John Appel	160 00
J. H. Baxter	85 05
Bank of Del Norte	727 54
H. M. Bennett	428 70
W. C. Beiger	500 00
Chas. S. Barnes	1 98
Beal Tightner Co	100 00
W. A. Berry	15 00
Rev. E. E. Bean	6 30
Nellie Bean, Treas., Mary E. Ayers Successor	28 00
A. J. Butler	24 78
Chas. Bessey	30 00
Bachelor Gro. Co	21 35
George Booth	50 00
Bachelor Lease, W. G. Boyle, Mgr.	136 61
Chas. E. Brown	36 00
Wm. Bader	1,953 90
W. T. Barnett	50 00
M. Born	104 80
Berryman & Dean	1 92
W. G. Boyle	416 25
E. H. Blunt	57 45
E. E. Broade	260 29
Burnham, Hanna, Munger & Co	203 25
Brandt & Elliott	40 00
E. O. Butler	100 00
W. C. Buck, Treas	29 65
Buck & Son	149 52
Geo. A. Bradburn	234 21
A. M. Burson	31 67

	Name and style of depositors.	Amounts.
	C. Y. Burson	58 97
	C. Y. Burson	44 43
	H. A. Butterfield	29 99
	O. H. Blank	200 00
	M. Ellen Bloom (Hutton)	31 71
	M. M. Buck	675 00
	Mary Bechtel (Mamie)	16 24
	Herman Broeske	103 75
10	Bailey & Brooks	3 65
	R. W. Cary	48 28
	A. M. Collins & Co	45 50
	A. M. Collins & Co	37 64
	Colorado Nat. Bank of Denver	155 05
	C. T. Christenson	36 95
	Creede Furn. & Und. Co	38 25
	D. W. Creason	10 00
	Continental Nat. Bank of Chicago	64 40
	Mae B. Carey	159 00
20	Continental Nat. Bank of Chicago	53 40
	O. W. Cann	46 85
	Colo. Valley Land Co	127 43
	W. H. Cunningham, Mgr	19 05
	John E. Coulson	13 75
	John E. Coulson	85 52
	Colo. Valley Land Co	744 50
	Wm. Couch	15 00
	Creede Furn. & Und. Co	370 16
	Conn. Fire Ins. Co	37 45
30	Charles M. Corlett	137 50
	Computing Scale Co.	19 50
	B. F. Carver	198 25
	Creede Benevolent Soc	50 35
	O. L. Corbin	44 50
	Creede Lumber Co	38 46

Name and style of depositors.	Amounts.
C. F. Chapman, Clerk W. O. W.	76 05
A. G. Crandell	127 90
Edward Cotton	15 00
Chapman Bros	22 86
D. M. Cox	78 06
Wm. Cochran	30 00
Wm. O. Chadd	36 00
John Carlson	60 00
Charlotte Dorris	63 50
Denver Nat. Bank of Denver	389 95
I. A. Dunham	50 00
The J. J. Douglass Co.	231 30
L. C. Darling, Treas.	76 53
Frank Donnings	9 00
Dorris & Son	5 50
W. C. Dotson	50 00
Albert C. Dean	20 00
A. W. Derrick	36 75
J. T. Dunn	100 00
M. L. Duncan	34 60
Wm. C. Dwigans	30 43
J. C. Durye	51 90
C. Dort	100 00
Bertha K. Elliott	84 02
Riley M. Edwards	208 50
C. Erickson	95 60
J. Elting	4 60
E. L. Edgerton	377 44
John V. Farwell	118 40
Frank Fulton	173 77
Lazard Freres	38 85
Lillian B. Ford, Guardian	12 95
First Nat. Bank of Chicago	11 90

	Name and style of depositors.	Amounts.
	John Fishback	96
	Mark Franklin	227 00
	Fidelity Savings Ass'n	20 00
	Frank & Stump	9 72
	Dr. E. L. Foster	11 43
	First Nat. Bank of Pueblo	184 14
	First Nat. Bank	967 70
	Frank Gillett	45 00
10	Nelse Goodman	98 79
	Germans Savings Inst	27 70
	W. L. Guinn	210 69
	Jacob Gable	16 27
	Jacob Gable	786 56
	Joseph Goldmitzer	117 50
	E. L. Hotchkiss	340 00
	Alonzo Hubbard	215 43
	A. Hereid	100 00
	C. H. Heckler	490 93
20	Hartman Truck Co	43 80
	A. R. Hubbard	37 47
	John Houck	20 00
	J. J. Hosselkus	82 40
	R. B. Halferty	307 41
	E. Brown Herrick, Agt	14 48
	Richard J. Hillier	108 25
	H. G. Henderson	365 00
	O. J. Hogarty	50 00
	Mrs. A. M. Herkert	25 40
30	Henkel Duke Mer. C	120 00
	Hatcher & Wood	496 31
	H. W. Hazlett	101 93
	Chas. Heins, Treas	405 00
	Samuel Honing	87 10
	Samuel Honing, Treas	841 17

Name and style of depositors.	Amounts.	
D. E. Hopkins	7 74	
Elizabeth Hoopes	926 90	
Hooper Grocery Co	63 22	
Richard S. Hutton	57 00	
J. J. Hosselkus	200 00	
Herman Heckt	466 89	
John Hecker	99	
F. C. & L. R. Hitchcock	125 74	
A. E. Headlie	112 80	10
W. O. Hurt,	118 52	
Silas J. Hall	138 03	
P. S. Hazlett	15 23	
W. L. Harrison	81 00	
A. J. Hack	29 00	
C. V. Henkle	18 25	
T. E. Ickes	356 42	
John Irwin	50 14	
A. W. Jermy	3 41	
James January	1,154 20	20
J. W. Jacobs	131 98	
Clara M. S. Jacobs	2 00	
Thomas W. Jesse	40 00	
Ida M. Johnson	220 00	
Morgan Jones	30 00	
C. A. Jones	3 15	
C. A. Jones	100 00	
Albert Johnson	500 00	
G. G. Johnson	860 50	
Mary A. Kimball, estate, Ernest M. Goodall, Admr	1,554 45	30
Kelly Shirt Co	54 30	
Perry Kolander	100 00	
Knauber J. Lithograph Co	29 52	
Mrs. R. B. King	65 00	

	Name and style of depositors.	Amounts.
	Mrs. Jennie Kipp	55 00
	Kent & Stuchfield	50 25
	Wm. Kennedy	50 00
	J. W. Kenton	179 28
	W. T. Kirkpatrick	328 00
	C. J. Kramer	425 00
	Kramer & Miller	255 71
	James Koello	256 25
10	F. A. Keyser	90 00
	Wm. La Cass	650 00
	R. L. Liddy	191 76
	T. J. Lakeman	14 69
	W. G. Lamb	113 00
	W. L. Likens	431 51
	Lillis Lovell	1,023 34
	L. J. Leander	40 95
	C. of Larson	87 73
	Liverpool & London Globe Ins. Co	23 05
20	J. W. Lincoln	145 00
	J. D. Lewis	29 00
	Hiram H. Marsh	871 44
	M. J. Moses	17 50
	Mrs. A. D. Moak	250 00
	M. J. Moses	29 20
	Monte Vista Labor Exchange	108 08
	Mercantile Nat. Bank	396 15
	Lizzie McIntosh	365 00
	Metropolitan Nat. Bank of Chicago	45 50
30	Mrs. M. L. Monroe	112 75
	H. H. Marsh	15 00
	Wilson McLain	48 00
	McCord, Bragdon Gro. Co	86 56
	J. F. Mongle	100 00
	C. F. Meyer	13 50

Name and style of depositors.	Amounts.
R. B. McNellis	186 00
George Martin	395 75
Chas. Maag	557 85
A. H. Major & Co	925 50
A. H. Major & Co	213 65
A. H. Major	100 00
Marvin Coal & Lumber Co	13 15
Albert L. Moses Asso	210 00
David H. McCullock	97 02
J. D. Myers	63 79
A. L. Miller	829 68
A. L. Miller, Treas	41 30
Cyrus Miller	18 01
E. W. Martin	262 99
A. L. Moses	16 07
John Mooney	100 51
Rosa Moses (Lahr)	54 00
Benj. A. Murphy	348 14
Katie Mosier	30 00
Katie Mosier, Treas	5 38
J. C. Mayfield	10 00
J. W. Miles	200 78
David Miles	69 18
Mutual Life Insurance Co	110 70
N. E. Morgan	40 50
J. W. MacDonald	13 31
F. W. Miles	19 20
James McFadden	55 16
S. T. McClure	14 50
W. A. Mitchell	48 03
John D. Murray	79 30
R. McLeod	130 00
R. R. Newton, Treas. School District No. 27	23 47

	Name and style of depositors.	Amounts.
	Nat. Fire Ins. Co., Geo. Dornin, Mgr.	13 30
	E. A. Norland	501 50
	Nat. Bank of Commerce of Denver	79 50
	T. H. Newton	757 85
	Niagara Fire Ins. Co	35 50
	Officer & Burrows	51 16
	John Owsley	3 51
	L. L. Orton	75 00
10	John Olson	100 00
	M. F. Powell	22 89
	Phoenis Ins. Co	41 90
	James Paterson	15 00
	James Paterson	14 20
	A. D. Parsons	250 00
	R. G. Penniston	131 06
	James D. Pilcher	49 74
	James D. Pilcher	94 59
	G. W. Pitman	133 93
20	Parlin & Orendorff	96 70
	Providence Washington Ins. Co	44 85
	Thos. R. Pace	16 38
	Mary Peachey	22 50
	C. A. Quiram	400 00
	C. E. Reese	253 90
	Rio Grande & Lariat Ditch Co	188 44
	M. Regan	48 49
	Chas. B. Rouss	58 14
	C. W. Roe	104 74
30	Ranchmen's Mill & E. Co	114 32
	Rosbrough & Co	152 35
	John D. Runyan	419 60
	Miss Edna Rosbrough	45 00
	Alvin H. Rouse	80 00
	E. H. Shotwell	158 86

Name and style of depositors.	Amounts.
Sears, Roebuck & Co	23 55
C. B. Stutsman	128 82
Mrs. E. A. Shotwell	1 46
Sweet, Orr & Co	241 80
Rev. G. W. Statton	14 90
W. O. Statton	725 75
H. Schiffer & Co	116 40
Omie Stevenson, Treas	14 14
Lydia E. Stillman	9 00
Shiffer & Bro	35 65
W. F. Schooler	10 49
Robert L. Smith	340 00
Mrs. Jennie Shultz	180 00
J. E. Smith	35 00
John H. Shaw, Comr	1,297 54
F. W. Sharp	75 00
W. C. Sloan, Treas	319 93
J. W. Skinner	45 35
Wm. C. Sloan	685 98
John P. Solis, by C. M. Corlett	15 44
Wm. A. Sutton	52 00
Staley Bros	103 33
M. M. Sutley	575 87
Edith M. Simpson	3 76
H. E. Snider	65 07
Phoebe C. Smith	1,145 00
C. W. Shultz	46 64
C. W. Shultz	19 36
W. P. Smith	219 01
E. T. Skinner	26 80
Carlos Stevens	65 00
B. F. Stone	345 90
St. Louis Glass & Queensware Co	76 15

	Name and style of depositors.	Amounts.
	T. D. Shilling	400 00
	T. D. Shilling	80 00
	John D. Shields	50 00
	Ed. Swanson	371 00
	D. W. Taff, Treas., L. W. Bellamy, Succr	595 79
	Tompkins Bros. Hdwe. Co	101 11
	S. W. Tracy	50 00
10	Trustees Lodge, No. 55, I. O. O. F., part of No. 62	30 00
	Union Nat. Bank	48 60
	M. E. Vaughn	145 55
	Frank P. Waterhouse	23 35
	J. H. Winne	51 00
	S. C. Wells	14 55
	W. S. Wintermute	26 56
	Olaf Westland	90 15
	M. V. B. Wason	64 52
20	Sadie Wake (Peartree)	10 25
	W. J. Watkins	250 00
	Wm. Wilson	4 00
	J. W. Westlake	242 00
	T. A. Wheeler, Treas. W. O. W.,	73 28
	W. D. Wilson	160 64
	W. D. Wilson, assigned from John Ostrum	92 02
	Weiss Chapman Drug Co	20 00
	Will J. Wood, P. M. U. S., assigned	334 00
30	Frank Woodruff & Stump	5 21
	H. S. Witherbee	5 00
	World Mfg. Co	5 00
	Dan Workman	1,100 00
	Chas. Ydren	70 00

Name and style of depositors.	Amounts.	
J. E. York	225 00	
Fred Youck	805 00	
C. A. Young	117 31	
Jacob Youck	285 00	
Wm. Youren	140 00	
Fred Youck	57 41	
S. E. Zollinger	4 00	
Amethyst Machine Shop	16 58	
Mrs. C. T. Boyle	176 85	10
John L. Brown	10 00	
Emma Blossom	164 31	
Geo. Boucher	48 95	
Brandt & Elliott	40 00	
H. B. Bruner	3 42	
Joe Butterworth	50 00	
Abe Bledsce	05	
W. A Chapson	197 50	
Thos. Cullen	35 80	
L. H. Carter	75 00	20
P. M. Cockrell	107 45	
Frankie Clark	36 53	
T. J. Cunningham	2 00	
D. G. Craig	25 00	
A. W. Cassey	4 01	
Joe Cotton	18 55	
Ed Cotton	03	
Denver Exchange	66	
Wm. Douglass	134 85	
F. J. Dinghan	90 00	30
Chas. O. Edstrom,	12 00	
A. J. Eaton	85	
C. E. Ewry Grocery Co	360 87	
L. B. Farrar	166 16	
Victor Freelove	1 58	

	Name and style of depositors.	Amounts.
	F. C. Friedman	1 00
	A. J. Fraiser	16
	Newell Groves	60 44
	H. Garrittson	15 00
	Fred Groom	95
	Emma K. Goad	15
	D. J. Gibbs	11
	F. B. Hubbard	95
10	L. D. Howell	14 00
	Elbert Howard	23 86
	Gilbert Hurd	26 27
	J. W. Hess	01
	A. M. Henderson	39 70
	John Howe	66
	E. M. Jackson	65
	W. D. Jenkins, Gen. Mgr.	6 23
	C. C. Kerr	2 20
	Oro. Kenton	5 00
20	C. M. King, Treas.	2 32
	Wm. Kernan	593 00
	H. B. King Commission Co	40 00
	L. J. Kempf	09
	Henry G. Lang	17 47
	Ella Lumbeck	8 50
	Ella Logan	5 00
	G. A. Meadows	31 82
	E. R. Mosher	8 88
	Merkt Bros	103 30
30	John Morris	2 68
	Masked Venus Mine	7 09
	W. K. Mains	1 64
	L. D. Murphy	5 00
	J. F. Morguson	13 07
	Benj. Miller	150 00

Name and style of depositors.	Amounts	
Irene Maben	8 22	
Ida Maben	8 22	
Ethel Mabel	8 22	
Midland Savings & Loan Co	13 47	
A. McPhee	250 00	
W. A. Magill	50	
Mayfield Bros	82	
Nichols Packing Co	122 78	
W. F. Newell	20 00	10
F. Oliver	12 00	
C. W. Partin	2 84	
J. W. Palmer	55 63	
David M. Phillips	50 00	
Emma Quigley	17 00	
Nellie Sargeant	05	
E. D. Smith	7 94	
F. E. Soward	1 35	
D. W. Soward	60 00	
Soward Bros	316 96	20
Schlatter & Hess	4 79	
J. N. Sanders	3 51	
J. F. Smith	35 00	
Roy Sloan	45 00	
Appollonia Stone	152 01	
Thompson Paper Co	7 05	
Mrs. Monroe Thompson	16 00	
W. P. Tuttle	1 86	
F. M. Tiller	5 34	
David Ulrey	28 30	30
P. Vidal	5 09	
Horhang Produce Co	8 51	
Edward West	12 00	
S. W. S. Woods	5 07	
C. C. Wilder	66	

Name and style of Depositors.	Amount.
H. C. Wellie	5 91
L. C. Wellington	26 65
Lydia Wolfe	30 28
C. E. Walrous	36 30
L. E. Webb	26 77
E. H. Watson	282 10
John F. Walsh	482 10
Wells & Robinson	59
Total	$66,115 93

And your orators further show that the present total indebtedness as above set forth of the said bank after deducting the payments made thereon by said assignee, amounting to eleven thousand six hundred and forty-six dollars and ninety cents, amounts to fifty-four thousand four hundred and sixty-nine dollars and three cents, upon which your orators claim interest thereon at the rate of eight-per centum per annum from the fifteenth day of June, eighteen hundred and ninety-nine, said rate of interest being the rate of interest in the State of Colorado, which indebtedness is at the present time over seventy thousand dollars.

And your orators further show that the laws of the State of Colorado at the time of the organization of said bank provided as follows:

Laws of Colorado, 1885, page 264, Section 1.

"Shareholders in banks, savings banks, trust deposit and security associations shall be held individually responsible for debts, contracts and engagements of the said associations, in double

the amount of the par value of the stock owned by them respectively."

And that said law has been at all times since the organization of said bank, and is now, in full force and effect.

And your orators further show that the following named persons or parties were shareholders in said bank when your orators became creditors, and were shareholders at the date of the assignment made by said bank, and that the number of shares held by each are as follows:

John A. Willett.....Five shares.
Robert D. Kent.....Five shares.
Frederick Lowe .....Five shares.
William P. Aldrich..Thirty shares.
Edo Kip.....Five shares.
Anna Basch.....Forty shares.
Moses E. Worthen...Thirty shares.
Estate of C. Aldrich.Thirty shares.

And your orators further show that said Edo Kip departed this life on the sixteenth day of February, eighteen hundred and ninety-nine, seized of certain, messuages, lands, tenements hereditaments, and leaving a last will and testament, wherein Arrianna Van Houten and Ella K. Goodlatte were appointed executrices, of said will, and that said executrices did thereupon, on the first day of March, eighteen hundred and ninety-nine, probate said will before Charles M. King, Surrogate of the County of Passaic, New Jersey, and took upon themselves the administration of the estate of the said Edo Kip, deceased, and that said Edo Kip left him surviving as his heirs-at-law and devisees of said mes-

suages, lands, tenements and hereditaments under said will, Arrianna Van Houten, Ella K. Goodlatte, Peter E. Kipp, John M. Kipp, John E. Kipp and Mary Kipp, reference being had to said will and the records of said Surrogate's office will more fully appear; and your orators further show that said Peter E. Kipp has since died, and your orators charge that said Arrianna Van Houten, Ella K. Goodlatte, John M. Kipp, John E. Kipp and Mary Kipp, heirs and devisees of said Edo Kip, deceased, are severally and individually liable for the obligation of said Edo Kip entered into as aforesaid.

And your orators further show that said Anna Basch departed this life on the twenty-fourth day of November, nineteen hundred and three, seized of certain messuages, lands, tenements and hereditaments, and leaving a last will and testament wherein Henry L. Basch, Isaac Basch and Marion Feder were appointed executors of said will and that said executors did thereupon, on the fifth day of December, nineteen hundred and three, probate said will before Charles M. King, surrogate as aforesaid, and took upon themselves the administration of the estate of said Anna Basch, deceased, and that said Anna Basch left her surviving as her heirs-at-law and devisees of said messauges, lands, tenements and hereditaments under said will, Isaac Basch, Marion Feder, James S. Basch, Carrie Basch, Matilda Basch and Emma J. Basch, and your orators charge that said heirs and devisees of said Anna Basch, deceased, are severally and indi-

vidually liable for the obligation of said Anna Basch, entered into as aforesaid.

And your orators further show that said Moses E. Worthen departed this life on the twenty-sixth day of December, eighteen hundred and ninety-seven, seized of certain messuages, lands, tenements and hereditaments, and leaving a last will and testament wherein the Passaic Trust and Safe Deposit Company was appointed executor and trustee of and under said will, and that said executor did thereupon, on the seventh day of January, eighteen hundred and ninety-eight, probate said will before Charles M. King, surrogate as aforesaid, and took upon itself the administration of the estate of said Moses E. Worthen, deceased, and that said Moses E. Worthen left him surviving as his heirs-at law and devisees of said messuages, lands, tenements and hereditaments under said will, Irene C. Worthen, now Irene C. Mansur, Harry Worthen, Frank Popple, Jr., Bessie Popple, and the Passaic Trust and Safe Deposit Company, a body corporate, trustee, and your orators charge that said heirs and devisees of said Moses E. Worthen, deceased, are severally and individually liable for the obligation of said Moses E. Worthen entered into as aforesaid.

And your orators further show that said William P. Aldrich for and on his own individual responsibility but in the name of the "Estate of C. Aldrich," subscribed for thirty shares of the stock of said bank, and that said William P. Aldrich in the name of the "Estate of C. Aldrich" was a shareholder in said bank when your orators became creditors, and was a shareholder at the date of the assignment made by said bank

to the extent of thirty shares, and your orators charge that said William P. Aldrich by so subscribing to said stock as aforesaid, became and was individually liable for the obligation entered into as aforesaid, and agreed to assume and did assume liability for the indebtedness of said bank in case of deficiency or insufficiency of corporate assets to liquidate such indebtedness in double the amount of the par value of such stock so subscribed for in the name of the "Estate of C. Aldrich" as aforesaid, and your orators charge that under and by virtue of the provisions of the statutes aforesaid, said William P. Aldrich is indebted to your orators in double the amount of the par value of said stock.

And your orators further show that the defendants herein are the only shareholders and persons liable within the jurisdiction of this court.

And your orators further show that under and by virtue of the Statutes of the State of Colorado, pursuant to which said State Bank of Monte Vista was organized and incorporated and under which it continued during all the period of its corporate existence to exercise its corporate franchises and privileges, each and every stockholder of said bank agreed to assume and did assume liability for the indebtedness of said bank in case of deficiency or insufficiency of corporate assets to liquidate such indebtedness in double the amount of the par value of his stock, and your orators charge that said defendants by virtue of the provisions of the said statutes hereinbefore mentioned are severally and individually indebted to your orators in double the amount of the par value of the stock

hereinbefore set forth as having been owned by them respectively.

And your orators further show that they have at divers times applied to the said John A. Willett, Robert D. Kent, Frederick Lowe, William P. Aldrich, and to said Arrianna Van Houten, Ella K. Goodlatte, John M. Kipp, John E. Kipp, and Mary Kipp, as heirs-at-law and deivsees of Edo Kip, deceased; and to Isaac Basch, Marion Feder, James S. Basch, Carrie Basch, Matilda Basch, and Emma J. Basch, as heirs-at-law and devises of Anna Basch, deceased; and to Irene C. Mansur, Harry Worthen, Frank Popple, Jr., Bessie Popple and the Passaic Trust and Safe Deposit Company, trustee, heirs-at-law and devisees of Moses E. Worthen, deceased, and requested them to pay to your orators said money so due your orators as aforesaid, and your orators well hoped that the said defendants would have complied with such reasonable requests, as in justice and equity they ought to have done;

In consideration whereof and inasmuch as your orators are remediless in the premises in the courts of law and can only have adequate relief in this honorable court, and to the end that the defendants may answer the premises (but without oath) and that the defendants, John A. Willett, Robert D. Kent and Frederick Lowe may be decreed to pay unto your orators the sum of one thousand dollars each; the defendant, William P. Aldrich may be decreed to pay unto your orators the sum of twelve thousand dollars; the defendants, Arrianna Van Houten, Ella K. Goodlatte, John M. Kipp, John E. Kipp, and Mary Kipp, as heirs-at-law and devisees of Edo Kip, deceased, may be decreed to pay unto your orators the sum of one thous-

and dollars; the defendants, Isaac Basch, Marion Feder, James S. Basch, Carrie Basch Matilda Basch and Emma J. Basch, as hers-at-law and devisees of Anna Basch, deceased, may be decreed to pay unto your orators the sum of eight thousand dollars; the defendants, Irene C. Mansur, Harry Worthen, Frank Popple, Jr., Bessie Popple, and the Passaic Trust and Safe Deposit Company, trustee, as heirs-at-law and devisees of Moses E. Worthen, deceased, may be decreed to pay unto your orators the sum of six thousand dollars;

And that your orators may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience,

May it please your Honor, the premises considered, to grant unto your orators the State's writ or writs of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said John A. Willett, Robert D. Kent, Frederick Lowe, William P. Aldrich, Arrianna Van Houten, Ella K. Goodlatte, John M. Kipp, John E. Kipp, Mary Kipp, Isaac Basch, Marion Feder, James S. Basch, Carrie Basch, Matilda Basch, and Emma J. Basch, Irene C. Mansur, Harry Worthen, Frank Popple, Jr., Bessie Popple, and the Passaic Trust and Safe Deposit Company, trustee, commanding them, and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray, &c.

HORTON & TILT,

Solicitors for and of Counsel with Complainants.

IN CHANCERY OF NEW JERSEY.

Between

ALFRED L. MILLER ET AL.,
Complainants,

and

JOHN A. WILLETT ET AL.,
Defendants.

On Bill, etc.

Demurrer.

The defendant Fred Lowe, not confessing any matters in the bill of complaint contained, to be true, demurs to said bill, and for causes of demurrer shows :

1st. That the complainants have not in their bill stated such a case as entitles them in a court of equity to any relief against the defendants, or any of them, as to the matters contained in said bill.

2nd. That it appears by the bill of complaint that the names of the natural persons and of the corporations, complainants, are not accurately or correctly set forth in said bill and their residences are not definitely given.

3rd. That it appears by the bill that there are divers other persons who are necessary parties to said bill and who are not made parties thereto ; and in particular it appears by the bill that

the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors named in said bill, is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the province or power of this Court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered and the proceeds justly and

equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statute of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stockholders by the provisions of the statute of the State of Colorado quoted in the bill of complaint is not enforceable in the courts of this state.

12th. That it appears by the bill that the same is exhibited against this defendant and the other defendants for distinct matters and causes, in several whereof, as appears by said bill, this de-

fendant is not in any manner concerned and that the bill is multifarious.

MOORE & WHITEHEAD,

Solicitors of Defendant.

T. M. MOORE,

Of Counsel.

STATE OF NEW JERSEY, } ss.
COUNTY OF PASSAIC, }

Fred Lowe, being duly sworn according to law, saith that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

FRED LOWE.

Sworn and subscribed before me this twenty-sixth day of March, nineteen hundred and four.

EDW. F. MOORE,

Notary Public,

Passaic, N. J.

I certify that I have perused the complainants' bill in the above stated cause and that the above demurrer is well founded in point of law.

THOS. M. MOORE,

Counsel.

IN CHANCERY OF NEW JERSEY.

Between
ALFRED L. MILLER ET AL.,
Complainants,
and
JOHN A. WILLETT ET AL.,
Defendants.
} *On Bill, etc.*

Demurrer.

The defendant William P. Aldrich, not confessing any matters in the bill of complaint contained, to be true, demurs to said bill, and for causes of demurrer shows :

1st. That the complainants have not in their bill stated such a case as entitles them in a court of equity to any relief against the defendants, or any of them, as to the matters contained in said bill.

2nd. That it appears by the bill of complaint that the names of the natural persons and of the corporations, complainants, are not accurately or correctly set forth in said bill and their residences are not definitely given.

3rd. That it appears by the bill that there are divers other persons who are necessary parties to said bill and who are not made parties thereto ; and in particular it appears by the bill that

the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors named in said bill, is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the province or power of this Court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered and the proceeds justly and

equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statute of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stockholders by the provisions of the statute of the State of Colorado quoted in the bill of complaint is not enforceable in the courts of this state.

12th. That it appears by the bill that the same is exhibited against this defendant and the other defendants for distinct matters and causes, in several whereof, as appears by said bill, this de-

fendant is not in any manner concerned and that the bill is multifarious.

MOORE & WHITEHEAD,
Solicitors of Defendant.

T. M. MOORE,
Of Counsel.

10

STATE OF NEW JERSEY, } ss.
COUNTY OF PASSAIC, }

William P. Aldrich, being duly sworn according to law, saith that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

WM P. ALDRICH.

Sworn and subscribed before me this twenty-
20 sixth day of March, nineteen hundred and four.

EDW. F. MOORE,
Notary Public,
Passaic, N. J.

I certify that I have perused the complainants' bill in the above stated cause and that the above demurrer is well founded in point of law.

THOS. M. MOORE,
30 *Counsel.*

IN CHANCERY OF NEW JERSEY.

Between

ALFRED L. MILLER ET AL.,
Complainants,

and

JOHN A. WILLETT ET AL.,
Defendants.

On Bill, etc.

Demurrer.

The defendant John A. Willett not confessing any matters in the bill of complaint contained, to be true, demurs to said bill, and for causes of demurrer shows :

1st. That the complainants have not in their bill stated such a case as entitles them in a court of equity to any relief against the defendants, or any of them, as to the matters contained in said bill.

2nd. That it appears by the bill of complaint that the names of the natural persons and of the corporations, complainants, are not accurately or correctly set forth in said bill and their residences are not definitely given.

3rd. That it appears by the bill that there are divers other persons who are necessary parties to said bill and who are not made parties thereto ; and in particular it appears by the bill that

the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors named in said bill, is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the province or power of this Court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered and the proceeds justly and

equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statute of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stockholders by the provisions of the statute of the State of Colorado quoted in the bill of complaint is not enforceable in the courts of this state.

12th. That it appears by the bill that the same is exhibited against this defendant and the other defendants for distinct matters and causes, in several whereof, as appears by said bill, this de-

fendant is not in any manner concerned and that the bill is multifarious.

MOORE & WHITEHEAD,

Solicitors of Defendant.

T. M. MOORE,

Of Counsel.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss.

John A. Willett, being duly sworn according to law, saith that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

JOHN A. WILLETT.

Sworn and subscribed before me this twenty-sixth day of March, nineteen hundred and four.

EDW. F. MOORE,

Notary Public,

Passaic, N. J.

I certify that I have perused the complainants' bill in the above stated cause and that the above demurrer is well founded in point of law.

THOS. M. MOORE,

Counsel.

IN CHANCERY OF NEW JERSEY.

Between
ALFRED L. MILLER ET AL.,
Complainants,
and
JOHN A. WILLETT ET AL.,
Defendants.
} *On Bill, etc.*

Demurrer.

The defendant Robert D. Kent not confessing any matters in the bill of complaint contained, to be true, demurs to said bill, and for causes of demurrer shows :

1st. That the complainants have not in their bill stated such a case as entitles them in a court of equity to any relief against the defendants, or any of them, as to the matters contained in said bill.

2nd. That it appears by the bill of complaint that the names of the natural persons and of the corporations, complainants, are not accurately or correctly set forth in said bill and their residences are not definitely given.

3rd. That it appears by the bill that there are divers other persons who are necessary parties to said bill and who are not made parties thereto ; and in particular it appears by the bill that

the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors named in said bill, is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the province or power of this Court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered and the proceeds justly and

equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statute of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stockholders by the provisions of the statute of the State of Colorado quoted in the bill of complaint is not enforceable in the courts of this state.

12th. That it appears by the bill that the same is exhibited against this defendant and the other defendants for distinct matters and causes, in several whereof, as appears by said bill, this de-

fendant is not in any manner concerned and that the bill is multifarious.

MOORE & WHITEHEAD,

Solicitors of Defendant.

T. M. MOORE,

Of Counsel.

STATE OF NEW JERSEY, } ss.
COUNTY OF PASSAIC, }

Robert D. Kent, being duly sworn according to law, saith that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

ROBERT D. KENT.

Sworn and subscribed before me this twenty-sixth day of March, nineteen hundred and four.

EDW. F. MOORE,

Notary Public,

Passaic, N. J.

I certify that I have perused the complainants' bill in the above stated cause and that the above demurrer is well founded in point of law.

THOS. M. MOORE,

Counsel.

IN CHANCERY OF NEW JERSEY.

Between
ALFRED L. MILLER ET AL.,
Complainants,
and
JOHN A. WILLETT ET AL.,
Defendants.
} *On Bill, etc.*

Demurrer.

The defendant, The Passaic Trust and Safe Deposit Company, Trustee, not confessing any matters in the bill of complaint contained, to be true, demurs to said bill, and for causes of demurrer shows :

1st. That the complainants have not in their bill stated such a case as entitles them in a court of equity to any relief against the defendants, or any of them, as to the matters contained in said bill.

2nd. That it appears by the bill of complaint that the names of the natural persons and of the corporations, complainants, are not accurately or correctly set forth in said bill and their residences are not definitely given.

3rd. That it appears by bill the that there are divers other persons who are necessary parties to said bill and who are not made parties thereto ; and in particular it appears by the bill that

the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors named in said bill, is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the province or power of this Court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered and the proceeds justly and

equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statute of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stockholders by the provisions of the statute of the

12th. That the said bill of complaint does not set forth any facts showing a liability on the part of this defendant for the debts of Moses E. Worthen, mentioned in said bill.

[illegible] against this defendant and the other defendants for distinct matters and causes, in several whereof, as appears by said bill, this de-

fendant is not in any manner concerned and that the bill is multifarious.

MOORE & WHITEHEAD,

Solicitors of Defendant.

T. M. MOORE,

Of Counsel.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } SS.

Charles M. Howe, President of the Passaic Trust and Safe Deposit Company, defendant in the above demurrer named being duly sworn according to law, saith that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

CHAS. M. HOWE.

Sworn and subscribed before me this twenty-sixth day of March, nineteen hundred and four.

EDW. F. MOORE,

Notary Public,

Passaic, N. J.

I certify that I have perused the complainants' bill in the above stated cause and that the above demurrer is well founded in point of law.

THOS. M. MOORE,

Counsel.

IN CHANCERY OF NEW JERSEY.

Between

ALFRED L. MILLER ET AL.,
Complainants,

and

JOHN A. WILLETT ET AL.,
Defendants.

On Bill, etc.

Demurrer.

The defendants, Isaac Basch, Marion Feder, James S. Basch, Carrie Basch and Emma J. Basch not confessing any matters in the bill of complaint contained, to be true, demurs to said bill, and for causes of demurrer shows :

1st. That the complainants have not in their bill stated such a case as entitles them in a court of equity to any relief against the defendants, or any of them, as to the matters contained in said bill.

2nd. That it appears by the bill of complaint that the names of the natural persons and of the corporations, complainants, are not accurately or correctly set forth in said bill and their residences are not definitely given.

3rd. That it appears by bill the that there are divers other persons who are necessary parties to said bill and who are not made parties thereto ; and in particular it appears by the bill that

the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors named in said bill, is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the province or power of this Court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered and the proceeds justly and

equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statute of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stock-

12th. That the said bill of complaint does not set forth any facts showing a liability on the part of these defendants for the debts of Anna Basch mentioned in said bill.

defendants for distinct matters and causes, in several whereof, as appears by said bill, this de-

fendant is not in any manner concerned and that the bill is multifarious.

MOORE & WHITEHEAD,

Solicitors of Defendant.

T. M. MOORE,

Of Counsel.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss.

Henry S. Basch being duly sworn on his oath says, that he is agent for all the defendants in the foregoing demurrer named, and that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

HENRY L. BASCH.

Sworn and subscribed before me this twenty-sixth day of March, nineteen hundred and four.

EDW. F. MOORE,

Notary Public,

Passaic, N. J.

I certify that I have perused the complainants' bill in the above stated cause and that the above demurrer is well founded in point of law.

THOS. M. MOORE,

Counsel.

IN CHANCERY OF NEW JERSEY.

Between
ALFRED L. MILLER ET AL.,
Complainants,
and
JOHN A. WILLETT ET AL.,
Defendants.
} *On Bill, etc.*

Demurrer.

The defendants, Arrianna Van Houten, Ella K. Goodlatte, John M. Kipp, John E. Kipp and Mary Kipp, not confessing any matters in the bill of complaint contained, to be true, demurs to said bill, and for causes of demurrer shows :

1st. That the complainants have not in their bill stated such a case as entitles them in a court of equity to any relief against the defendants, or any of them, as to the matters contained in said bill.

2nd. That it appears by the bill of complaint that the names of the natural persons and of the corporations, complainants, are not accurately or correctly set forth in said bill and their residences are not definitely given.

3rd. That it appears by bill the that there are divers other persons who are necessary parties to said bill and who are not made parties thereto ; and in particular it appears by the bill that

the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman, as assignee for the benefit of creditors named in said bill, is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the province or power of this Court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered and the proceeds justly and

equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statute of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stockholders by th[illegible]

12th. That the said bill of complaint does not set forth any facts showing a liability on the part of these defendants for the debts of Edo Kip mentioned in said bill.

[illegible] defendant and the other defendants for distinct matters and causes, in several whereof, as appears by said bill, this de-

fendant is not in any manner concerned and that the bill is multifarious.

MOORE & WHITEHEAD,

Solicitors of Defendant.

T. M. MOORE,

Of Counsel.

STATE OF NEW JERSEY, } ss.
COUNTY OF PASSAIC. }

Arrianna Van Houten and Ella K. Goodlatte, two of the defendants above named, being duly sworn according to law, saith that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

ARRIANNA VAN HOUTEN,

ELLA K. GOODLATTE.

Sworn and subscribed before me this twenty-sixth day of March, nineteen hundred and four,

EDW. F. MOORE,

Notary Public,

PASSAIC, N. J.

STATE OF NEW JERSEY, } ss.
COUNTY OF PASSAIC, }

John E. Kipp, Mary J. Kipp and John M. Kipp being duly sworn according to law, saith that the foregoing demurrer is not interposed

for delay, but in good faith for the causes therein set forth.

MARY J. KIPP,
JOHN E. KIPP,
JOHN M. KIPP.

Sworn and subscribed before me this twenty-eighth day of March, nineteen hundred and four.

EDW. F. MOORE,
Notary Public,
Passaic, N. J.

I certify that I have perused the complainants' bill in the above stated cause and that the above demurrer is well founded in point of law.

THOS. M. MOORE,
Counsel.

IN CHANCERY OF NEW JERSEY.

MILLER
vs.
WILLETT.

Syllabus.

Filed October 18, 1905.

1. A bill of complaint, which states that the complainants jointly have rights of action against several defendants, no one of whom is liable in whole or in part for the others' debt; which asks neither accounting nor discovery, but demands simply the payment by each defendant separately, of a definitely ascertained sum of money; which shows no joint or related liability between the defendants; which alleges neither the breach of a trust, the perpetration of a fraud, nor any other ground for equitable relief, is demurrable for want of equity.

2. Such a bill is multifarious in that it subjects each unrelated defendant, who the bill shows is entitled to defend separately, to the embarrasment of defending a suit in which others are joined as defendants, with whom he has no apparent common interest.

3. A bill which seeks to enforce a statutory obligation in the nature of a guaranty of a debt, by compelling the payment of sums largely in excess of the amount necessary to satisfy that debt, is demurrable for want of equity.

IN CHANCERY OF NEW JERSEY.

Between

ALFRED L. MILLER *et als.*,
Complainants,

and

JOHN A. WILLETT *et als.*,
Defendants.

On demurrers to bill of complaint.

Opinion.

The bill of complaint in this cause is filed by Alfred L. Miller and more than four hundred and fifty other persons, who allege themselves to be residents in the State of Colorado, and to be all of the depositors in and creditors of the State Bank of Monte Vista, in the county of Rio Grande, in that state.

The defendants are John A. Willett and nineteen others, who are in the bill alleged to be the only shareholders in said bank and persons liable for the debts, within the jurisdiction of this Court.

The bill of complaint alleges that the State Bank of Monte Vista since the eleventh day of August, 1890, has been and still is a corporation organized under the laws of the State of Colorado, having a capital stock which as increased is $80,000, divided into 800 shares of the par value of $100.00 each. That the said bank conducted in three different places in Colorado a

general banking business until June 15th, 1899, when it became insolvent, and on that day made an assignment under the laws of the State of Colorado and appointed one Norman H. Chapman as assignee. That the assignee qualified and took possession of the property and choses in action of the bank, converted them into money and paid them out to the creditors of said bank, and that nothing remains for distribution; all the property and choses in action having been disposed of, resulting in the payment by said assignee upon the indebtedness of the bank as of December 15, 1899, of fifteen per cent., and of December 1, 1901, of four and a half per cent., and that if any further moneys are recovered for said bank creditors, it must be from the stockholders upon their stock liability. That the complainants deposited in that bank at times while the defendants were shareholders therein, and that the balances of complainants' deposits remaining in the bank at the date of its failure were the sums stated in the list set forth in the bill of complaint, amounting in the aggregate to $66,115.93. That the present total indebtedness of the said bank (after crediting the payments made thereon by the assignee, amounting to $11,646.90), amounts to $54,469.03, upon which the complainants claim interest at the rate of eight per cent. per annum from June 15th, 1899, being the rate of interest allowed by law in the State of Colorado.

The complainants further allege that the laws of the state of Colorado at the time of the or-

ganization of the bank provide as follows : Laws of Colorado 1885, p. 264, No. 1.

> "Shareholders in banks, savings banks, trust deposit and security associations, shall be individually responsible for debts, contracts and engagements of the said association, in double the amount of the par value of the stock owned by them respectively."

That said law has been at all times since the organization of the bank and now is in full force and effect.

The bill of complaint further alleges that when the complainants became creditors of said bank, the defendants in this bill were shareholders therein, and continued to be shareholders at the date of said bank's assignment, and that the number of shares held by each defendant is as follows :

John A. Willett	Five shares.
Robert D. Kent	Five shares.
Frederick Lowe	Five shares.
William P. Aldrich	Thirty shares.
Edo Kip	Five shares.
Anna Basch	Forty shares.
Moses E. Worthen	Thirty shares.
Estate of C. Aldrich	Thirty shares.

The bill of complaint further alleges that said Edo Kipp died February 16th, 1899, seized of certain lands, &c., leaving a last will whereof Arrianna Van Houten and Ella K. Goodlatte were appointed executrices, that they probated

said will on March 1, 1899, before the Surrogate of Passaic county, and undertook the administration of the estate of said decedent; that said Kipp left him surviving as his heirs-at-law and devisees of his lands, etc., Arrianna Van Houten, Ella K. Goodlatte, Peter E. Kipp, John M. Kipp and Mary Kipp; that said Peter E. Kipp has since died, and the complainants charge that said Arrianna Van Houten, Ella K. Goodlatte, John M. Kipp and John E. Kipp and Mary Kipp, heirs and devisees of said Edo Kipp, are severally and individually liable for the obligation of said Edo Kipp under the will as above stated.

The bill of complaint further alleges that Anna Basch departed this life on November 24, 1903, seized of certain lands, &c., testate, as by her last will appointed Henry L. Basch, Isaac Basch, and Marion Feeder, executors of her will, who on December 5th, 1903, proved the same before the Surrogate of Passaic County and took upon themselves the burden of the execution thereof. That said Anna Basch left her surviving as her heirs at law and devisees of her lands, etc., Isaac Basch, Marion Feeder, James S. Basch, Carrie Basch, Matilda Basch, and Anna J. Basch, who the complainants charge, are severally and individually liable for the obligation of said Anna Basch, under the will aforesaid.

The bill further alleges that said Moses E. Worthen departed this life December 26th, 1897, testate, seized of certain lands, etc., and by his last will appointed the Passaic Trust and Safe

Deposit Company, executor and trustee, which company on January 7th, 1898, probated said will before the Surrogate of Passaic County and undertook to execute the same, and that said Moses E. Worthen left him surviving as his heirs at law and devisees of his lands, etc., Irene C. Worthen, now Irene C. Mansur; Harry Worthen, Frank Popple, Jr., Bessie Popple, and the Passaic Trust and Safe Deposit Company, trustee, and the complainants charge that the said heirs and devisees are severally and individually liable for the obligation of said Moses E. Worthen as above stated.

The bill of complaint further alleges that William P. Aldrich upon his individual responsibility, but in the name of the "Estate of C. Aldrich", subscribed for thirty shares of the stock of said bank, and was a shareholder therein when the complainants became creditors and at the time of the assignment made by said bank, to the extent of thirty shares, and the complainants charge that said William P. Aldrich, upon subscribing to said stock, became and was individually liable for the obligation entered into as above named, and agreed to assume and did assume the liability for the debts of said bank, (in case of insufficiency of the corporate assets to liquidate such indebtedness) in double the amount of the par value of the stock subscribed for in the name of "Estate of C. Aldrich", and the complainants charge that said William P. Aldrich is indebted to complainants in double the amount of the par value of said stock.

The bill further alleges that by virtue of the statute of the state of Colorado, pursuant to which said State Bank of Monte Vista was incorporated, each and every stockholder of said bank agreed to assume and did assume liability for the indebtedness of said bank (in case of deficiency of its assets to liquidate its indebtedness), in double the amount of the par value of his stock; and the complainants charge that the defendants by virtue of the provisions of said statute, are severally and individually indebted to the complainants in double the amount of the par value of the stock in the bill of complaint set forth as being held by them respectively.

The bill prays that the defendants John A. Willett, Robert E. Kent and Frederick Lowe may be decreed to pay to the complainants the sum of $1,000 each; the defendant William P. Aldrich the sum of $12,000; the defendants Arrianna Van Houten, Ella K. Goodlatte, John M. Kipp, John E. Kipp and Mary Kipp, as heirs at law of Edo Kipp, deceased, the sum of one thousand dollars; the defendants Isaac Basch, Marion Feeder, James S. Basch, Carrie Basch, Matilda Basch and Emma J. Basch, as heirs at law and devisees of Anna Basch, the sum of $8,000.00, the defendants Irene C. Mansur, Mary Worthen, Frank Popple, Jr., Bessie Popple and the Passaic Safe and Deposit Company, trustees, as heirs at law and devisees of Moses P. Worthen, deceased, the sum of $6,000.00, and for further relief, &c.

Seven separate demurrers have been filed to the bill of complaint. One by John A. Willett; another by Robert B. Kent; another by William P. Aldrich; another by Fred Lowe; another by the Passaic Trust and Safe Deposit Company, trustee; another by Isaac Basch, Marion Feeder, James S. Basch, Carrie Basch and Emma J. Basch; and another by Arrianna Van Houten, Ella K. Goodlatte, John M. Kipp, John E. Kipp and Mary Kipp.

Thirteen grounds of demurrer are stated by the different demurrants which are substantially the same. They are as follows:

1st. That the complainants have not in their bill stated such a case as entitled them in a court of equity to any relief against the defendants or any of them, as to the matters contained in said bill.

2nd. That it appears by the bill of complaint that the names of the natural persons and of the corporations, complainants, are not accurately or correctly set forth in said bill; and their residences are not definitely given.

3rd. That it appears by the bill that there are divers other persons who are necessary parties to said bill and who are not made parties thereto; and in particular it appears by the bill that the State Bank of Monte Vista named in said bill is a necessary party thereto, and that Norman H. Chapman as assignee for the benefit of creditors named in said bill is a necessary party thereto, but that neither of said necessary parties is made a party to said bill.

4th. That it appears by the said bill that complete justice can be done only by the courts of the jurisdiction where the corporation, the said State Bank of Monte Vista, was created, and that only a part of the stockholders being parties defendant to this proceeding, it is not within the province or power of this court to make the ascertainment and afford the equitable relief contemplated by the Colorado statute, and, therefore, the bill should be dismissed.

5th. That it does not appear by the bill of complaint that the complainants have recovered judgments upon their claims against the State Bank of Monte Vista in the State of Colorado or elsewhere or have had in any way the validity of their claims judicially determined against said bank.

6th. That it does not appear by said bill that the validity of the claims of the complainants has been established against the stockholders of said bank by the assignee of said bank or by any court.

7th. That it does not appear by said bill that the assets of said bank were legally and properly administered, and the proceeds justly and equitably applied to the reduction of the debts of the creditors.

8th. That it does not appear by said bill that the assets of the said bank were ascertained and administered in any suit or proceeding to which the stockholders of said bank were parties or wherein the rights and equities of the stockholders of said bank were duly regarded.

9th. That the complainants' rights depend upon the statute of the State of Colorado, which cannot be equitably enforced by this Court in view of the circumstances set forth in the bill of complaint.

10th. The statute of Colorado, upon which the complainants rely, contemplates a proceeding in equity in the domiciliary jurisdiction by the creditors of the corporation against all the stockholders thereof for the purpose of establishing a pro rata liability. This Court will not enforce the liability created by the statute of Colorado in a suit by creditors against a few of the stockholders.

11th. That the liability imposed upon stockholders by the provisions of the statute of the State of Colorado quoted in the bill of complaint is not enforceable in the courts of this State.

12th. That the said bill of complaint does not set forth any facts showing a liability on the part of this defendant for the debts of Moses E. Worthen, mentioned in said bill.

13th. That it appears by the bill that the same is exhibited against this defendant and several other defendants for distinct matters and causes, in several whereof, as appears by the bill, this defendant is not in any manner concerned, and that the bill is multifarious.

The cause was argued on these grounds of demurrer.

MR. THOMAS M. MOORE and MR. H. C. WHITEHEAD for demurrants.

MESSRS. HORTON & TILT, and MR. EUGENE EMLEY, (with whom was MR. PHILO P. TOLLES, of the Denver bar), for complainants.

GREY, *V. C.*

The Colorado statute which is the basis of this suit, declares that the shareholders of banks in that state, shall be individually responsible for the debts of the bank in double the amount of the par value of the stock owned by them respectively.

The bill of complaint is filed against eleven defendants in different groups, alleging that each group is severally and respectively indebted to the complainants in a certain named sum of money. The complainants pray that each group of defendants may be decreed to pay to the complainants the definite amount of money named in the bill of complaint.

This cause has been argued upon the widest possible basis, presenting variant constructions of the Colorado statute above quoted, and citing numerous decisions in different states touching the meaning of that act, the proper mode of procedure to enforce it, and also discussing the constitutionality, operation and effect of the New Jersey act, March 30th, 1897, (LL, 1897, p. 124), prohibiting suits of this character, in the courts of this state, unless the corporation and all of its stockholders shall be made parties.

I have not found it to be necessary to consider each of the grounds of demurrer to the complainants' bill of complaint, inasmuch as several of the objections presented affect the whole case as the complainants have stated it in their bill of complaint, and when determined must dispose of these demurrers.

The first cause of demurrer challenges the bill of complaint upon the ground that the complainants have not set forth such a case as entitles them to any relief in equity, &c.

As the complainants state their cause of complaint, they have a right to the payment of seven definitely ascertained sums of money. They seek separate money decrees, that certain named defendants shall respectively pay these several sums, and they ask no other relief. The following summary of the prayer for relief exhibits this feature of the bill of complaint.

The complainants pray :

That John A. Willett may be decreed to pay $1,000 00.

That Robert D. Kent may be decreed to pay $1,000.00.

That Frederick Lowe may be decreed to pay $1,000.00.

That William P. Aldrich may be decreed to pay $12.000.00.

That Arrianna Van Houten, Ella K. Goodlatte, John E. Kipp and Mary Kip, as heirs and devisees, may be decreed to pay $1,000.00.

That Isaac Basch, Marion Feder, James S. Basch, Carrie Basch, Matilda Basch and Emma

J. Basch, as heirs and devisees, may be decreed to pay $8,000.00.

That Irene C. Mansur, Harry Worthen, Frank Popple, Jr., Bessie Popple and The Passaic Trust &c., heirs and devisees &c., may be decreed to pay $6,000.00.

It is not asserted that any group of defendants which is alleged to owe one of these definite sums, is in any way liable in whole or in part for any other of them. Nothing in the expressions of the bill suggests that there is any need of an accounting as between the complainants and any or all of the defendants. No discovery is sought by the bill of complaint. No facts are stated which indicate the existence of any trust which is sought to be enforced ; nor is any fraud alleged against which relief is asked. Nor is any other element of equity jurisdiction presented by the complainants' bill of complaint. All that is alleged is, that certain named defendants are indebted in certain definitely ascertained sums of money to the complainants, which they seek to recover severally in full, from the respective defendants, by this suit.

As the complainants state their case, there is no ground of equitable jurisdiction exhibited. The facts set forth in the bill of complaint, if taken to be true, as asserted by the complainants, do show that they have a direct, certain and adequate remedy by suit at law to recover each sum of money which they claim against the several defendants respectively. There is therefore no occasion for an appeal to equity jurisdiction. In such cases a demurrer to the

bill of complaint will be sustained. Story Eq. Pl., No. 473.

The bill of complaint is also challenged by the demurrants upon the ground that it is multifarious. The face of the bill alleges that the defendants in seven different groups, owe seven distinct sums of money, constituting seven separate causes for action, which as between the separate groups of the defendants (so far as the bill of complaint states the situation), are wholly unrelated.

The Colorado statute, which is alleged to have created the liabilities sought to be enforced in this suit, is recited on the face of the bill of complaint, to make the shareholders individually responsible in double the amount of the par value of the stock owned by them respectively.

This is obviously a several liability of each shareholder to the creditors of the bank. It was so held in Auer v. Lombard, 72 Fed. Rep., 209. The complainants themselves insist that it is several.

It has been declared by the Colorado courts interpreting this statute, in the case of Zang v. Wyant, 25 Col., 551, that a suit in equity for the common benefit of all the creditors affords the most effectual and convenient proceeding to enforce the provision under examination. This very general statement of the occasion for a suit in equity may define correct equity practice in a state in which the distinction between law and equity tribunals is not maintained, but the course of the procedure there suggested cannot be recognized as authority here without

bringing our practice into inextricable confusion. Suits in equity in this State are maintained, not because they are effectual or convenient remedies to complainants, but because the relations of the camplainants to the defendants are such that they have, as against them, equitable grounds for relief. In the Colorado case cited it does not appear whether all the shareholders or only some of them were made defendants ; nor whether the amount of the bank's unpaid debt exceeded the whole sum for which the shareholders were liable, or only a part thereof requiring an accounting and decree for proportionate payments.

In the case presently before me, the bill of complaint contains no allegations of facts which justify the joining in one suit these several and respective claims against many different persons. No concert of action by the defendants is alleged ; no obligation common to all defendants is set forth, nor is there any tie suggested by which the claims of the complainants against all these defendants should be joined, except that it will prevent a multiplicity of suits. But that would be true if the complainants should join in one suit all the unrelated claims they might have against any number of defendants. The complainants say each defendant separately owes the whole sum which he is asked to pay, but they state no reason for joining in one suit these seven several and distinct, and apparently (so far as the bill shows), unrelated claims.

This feature of the bill of complaint justifies the defendant's contention that it is multifar-

ious. It subjects the defendants, who the complainants show are entitled to defend separately, to the embarrassments of a suit in which others are joined, who apparently have no common interest.

It also appears on the face of this bill of complaint, that no equitable decree can be made in this suit against the defendants.

It must be noted that the complainants do not ask, nor does their bill contemplate, a collection in this suit from each defendant of that proportion of the bank's debt (not exceeding his whole liability), which he ought to pay. Such a procedure would require not only an accounting, but also the presence as parties in the suit of all the shareholders who are liable for proportionate shares of the bank's debt. What the complainants here demand is, that each defendant shall pay the uttermost sum for which he may be liable, although the total of the payments which may thus be demanded from all the shareholders will far exceed the bank's debt. This seeks to force upon each defendant an obligation beyond what any equitable construction of his statutory liability requires.

The Colorado statute declares that the shareholder shall be individually responsible for the debts of the bank, in double the amount of the par value of the stock which he owns. The obvious meaning is, that whatever of the bank's debts its assets (when applied) shall fail to pay, the shareholders shall make good to the creditors, each shareholder being responsible individually, and not jointly, for his proportionate share of the bank's unpaid debts, to an extent

not exceeding double the amount of the par value of the stock which he may own. It is an obligation severally owed by each shareholder to all of the creditors.

In the present suit the complainants allege that the total of the bank's unpaid debts is $56,-469.03. That the par value of each share issued by the bank, $100.00, with an issue amounting in the total to $80,000; that of the 800 shares issued the defendants in this suit hold 150, which are of the total par value of $15,000. The present suit seeks several and respective decrees against the defendants (who hold only 3-16 of the shares) to the amount in all of $30,-000. Like suits against the other shareholders will make them pay $130,000. By such a construction of the statutory liability and procedures to enforce it, the creditors will collect $160,000, to pay the bank's indebtedness, which it is admitted on the face of the bill, is little more than one third of that amount.

There has been some discussion in the cases cited, of the question whether this statutory liability is the imposition of a penalty, or the creation of a statutory contractual obligation, imposed by the state in granting the franchise, which the shareholder has accepted by taking his shares. The tendency of the courts is to adopt the latter view.

It is a familiar principle that courts of equity will not enforce penalties. The complainants in this suit do not present their case as one seeking to enforce penalties, yet their bill of complaint as framed, by insisting upon the several liability of each defendant to pay as an abso-

lute sum double the par value of his shares, the total of which is far in excess of the bank's unpaid debts, and omitting to bring in as defendants all the shareholders, and to invite an accounting and the ascertainment of the proportionate sums which each should respectively pay to satisfy the bank's unpaid debts—in effect seeks to enforce against each defendant the payment of a fixed sum, wholly unrelated and out of all proportion to the amount needed to pay the bank's debts. In short to enforce a penalty. This defect of the bill of complaint is apparent upon its face and affects this Court's ability to make any decree in this cause which will be just and equitable.

For the reasons above stated, the demurrers to the bill of complaint must be sustained, with costs.

IN CHANCERY OF NEW JERSEY.

Between

ALFRED L. MILLER *et al.*,

Complainants,

and

JOHN A. WILLETT *et al.*,

Defendants.

On Bill, &c.

Final Decree.

This cause coming on to be heard in the presence of Messrs. Horton & Tilt, solicitors and of counsel with the complainants, and Messrs. Moore & Whitehead, solicitors and of counsel with the defendants, and the Chancellor being of the opinion that said demurrer is good and sufficient, it is on this twenty-second day of May, nineteen hundred and five, ordered that the same do stand and be allowed and that the complainants pay to the defendants their costs of the said demurrer to be taxed.

Respectfully advised.

W. J. MAGIE,
C.

M. P. GREY,
V. C.

A true copy.

VIVIAN M. LEWIS,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between ALFRED L. MILLER *et. als.*, *Complainants,* *and* JOHN A. WILLETT *et. al.*, *Defendants.*	*On Bill, &c.*

Notice of Appeal.

The complainants hereby appeal from so much of the final decree made in this court, in the above stated cause, as declares the demurrer to be good and sufficient, to the Court of Errors and Appeals in the last resort in all causes.

HORTON & TILT,
Solicitors of Complainants.

Dated June 22, A. D., 1905.

I conceive there is good cause for appeal in the above stated cause.

RAYTON E. HORTON,
Of Counsel with Complainants.

Service of the within notice of appeal is hereby acknowledged this 23rd day of June, A. D., 1905.

MOORE & WHITEHEAD,
Solicitors of Defendants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
ALFRED L. MILLER *et als.*,
Appellants,
and
JOHN A. WILLETT *et als.*,
Respondents.

Petition of Appeal.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes :

The petition of Alfred L. Miller et als., the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of New Jersey, bearing date the twenty-second day of May, in the year nineteen hundred and five, &c., wherein the said Alfred L. Miller et als., were complainants, and the said John A. Willett et als., were defendants, in this respect, to wit: that the said decree adjudges that the demurrer filed by said defendants to the complainants' bill is good and sufficient and should stand and be allowed, and that the complainants pay to the defendants their costs of the said demurrer to be taxed.

And your petitioners humbly appeal from the whole of said decree upon the ground that the same is erroneous.

And your petitioners therefore pray that the said decree of the said Chancellor may be reversed, set aside and for nothing holden and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

HORTON & TILT,
Solicitors for and of Counsel with Appellants.

Services of the within Petition of Appeal is hereby acknowledged this 21st day of July, A. D., 1905.

MOORE & WHITEHEAD,
Solicitors for Defendants.

Answer to Petition of Appeal.

The respondents filed an answer to the Petition of Appeal in the usual form.