We find no reversible error in the record, and the judgment in each case will be affirmed.

QUINN *v.* MURPHY.

Opinion delivered March 10, 1930.

1. CORPORATIONS—FRAUD IN LIQUIDATION.—Evidence *held* to sustain a finding that there was no fraud in liquidating the affairs of an insolvent corporation.
2. EXECUTORS AND ADMINISTRATORS—PERSONAL LIABILITY OF ADMINISTRATRIX.—An administratrix *held* not personally liable on signing a stockholders' agreement to liquidate the affairs of an insolvent corporation, of which her deceased husband was a stockholder.
3. TRIAL—TRANSFER OF CAUSE TO EQUITY—WAIVER OF OBJECTION.—Objection to the transfer of a cause from the law court to equity was waived where no exception was taken to the latter court's order overruling a motion to retransfer the cause to the circuit court.

Appeal from Miller Chancery Court; *C. E. Johnson,* Chancellor; affirmed.

STATEMENT OF FACTS.

On the 29th day of June, 1927, appellants instituted an action in the circuit court against appellees to recover damages for their fraudulent conduct in liquidating the affairs of an oil corporation in which all parties were stockholders. Appellees denied liability, and filed a cross-complaint against appellants to recover a sum alleged to be due by them for damages for the non-performance of a stockholders' agreement. On motion of appellees and over the objection of appellants, the case was transferred to the chancery court. No exceptions were saved by appellants to the action of the chancery court in trying the case.

Thomas Quinn was the owner of eighteen shares of stock of the par value of $100 each in the Farmers' Oil & Fertilizer Company, a corporation duly organized and doing business in the State of Texas. He died intestate in Miller County, Arkansas, leaving surviving him his

widow, Isabella Quinn, and the other appellants as his sole heirs at law. His widow became administratrix of his estate and signed a stockholders' agreement looking to the conduct of the business of said corporation which will be referred to more specifically in the opinion.

Appellees were stockholders and directors in said corporation. The affairs of the corporation became involved, and its total obligations amounted to the sum of $239,000. It was then decided to liquidate the affairs of the corporation, and one of its directors and stockholders was chosen by the others as the liquidating agent. The plan was to organize a new corporation for the purpose of buying in the assets of the old corporation, and to let all the stockholders of the old corporation take stock in the new corporation in proportion to the amount of stock they owned in the old corporation. In this way they accumulated the sum of $100,000 as the capital stock of the new corporation, and it was decided to buy in all the assets of the old corporation if they could be purchased for that sum. Otherwise it was determined to let the assets of the old corporation go to the highest bidder at the sale. At the sale, the assets of the old corporation were sold to the new corporation for the sum of $100,000, and this sum was used in paying off the debts of the old corporation. This left the old corporation in debt in the sum of $139,000, and some of the directors and stockholders of the old corporation had, prior to the liquidation of its affairs, become signers of notes for that amount.

The evidence shows that $100,000 was a fair valuation for all of the assets of the old corporation. The directors of the old corporation who had assumed the balance of its indebtedness testified that appellants were given an opportunity to take stock in the new corporation and refused to do so. Some of them say that they were willing at the time they testified to turn over as much of their stock as appellants might desire at its par value with six per cent. interest. Two of the old directors who had taken stock in the new corporation testified that they

were willing to let appellants have their stock in the new corporation at par value without interest and stated further that the amount of their stock was more than the amount of stock owned by Thomas Quinn in the old corporation.

The chancellor found the issues on the complaint in favor of appellees, and on the cross-complaint in favor of appellants. A decree was entered of record accordingly, and the case is here on appeal.

J. D. Cook, Sr., and *F. S. Quinn,* for appellants.

Will Steel, for appellees.

HART, C. J., (after stating the facts). We are of the opinion that the decision of the chancellor was correct. Prior to the bringing of this suit, another suit had been brought to enforce the stockholders' agreement for contribution to pay the losses of indorsers on the paper of the old corporation, and this case is reported in 175 Ark. 10, 299 S. W. 361, under the style of *Murphy* v. *Winham.*

By stipulation of the parties, the record of the testimony in that case is made a part of the present suit. Upon appeal, it was said that the chancery court in that case correctly held that the value of the assets of the old corporation was duly made and free from fraud, and that the price obtained $100,000 was the reasonable value thereof. The court stated further that this was the fair market value of the assets of the corporation at the time of the sale. It was further stated in the opinion that the organization of the new corporation was not made under such circumstances as to show that it was a continuation of the old corporation. It was stated that the facts showed it to be a separate corporation, and that the conveyance was made to the new corporation instead of to the liquidating agent for the sake of convenience, and that there was no fraud in organizing the new corporation for the purpose of buying the assets of the old corporation at a fair market price.

Several of the directors and stockholders of the old corporation testified in the present suit. Each of them

stated that $100,000 was the reasonable market value of the assets of the old corporation, and that it was intended by them that, if any one should bid more than the sum of $100,000 for the assets of the old corporation, they would not bid higher, and that such purchaser might have all of the assets of the old corporation for the sum so paid. The sum of $100,000 which was the capital stock of the new corporation was paid and used by the directors of the old corporation in paying off its debts. The directors and stockholders of the old corporation were liable for the balance of the indebtedness of that corporation in the sum of about $139,000. There is nothing whatever to show that they were actuated by fraud in liquidating the affairs of the old corporation, and they merely organized the new one for the purpose of purchasing the assets of the old corporation at a fair price and reimbursing themselves, if possible, for losses to the management of the old corporation. They testified that all of the stockholders were given an opportunity to take stock in the new corporation in the same proportion to that owned by them in the old corporation. Some of them testified that they were willing now to sell their stock to appellants at par value with six per cent. interest added. Two of them testified that they were willing to let appellants have their stock at par value without interest, and that the amount of stock owned by them in the new corporation was more than that owned by appellants in the old corporation. Therefore, we are of the opinion that the chancellor properly decided the issues in favor of appellees on the complaint of appellants.

Appellees have prosecuted a cross-appeal, and but little need be said on that phase of the case. The court properly held in favor of appellants on the issues raised by the cross-complaint of appellees. The cause of action of appellees against appellants arose from the stockholders' agreement in the old corporation which was signed by Mrs. Isabella Quinn, the widow of Thomas Quinn, after his death. Of course, the remaining appel-

lants, who were children and heirs at law of Thomas Quinn, were not bound by any agreement signed by his widow. Mrs. Isabella Quinn signed the agreement as administratrix of her husband's estate. The stockholders' agreement which she signed is copied in full in the transcript, but is too lengthy to be inserted in this opinion. We deem it sufficient to state that we have read and considered it in its entirety; and from it, and from the testimony of Mrs. Isabella Quinn, we are convinced that she did not sign it for the purpose of becoming personally liable, but only signed it in order to pledge her husband's interest in the assets of the old corporation, in so far as his interest would go for the payment of its debts. We are of the opinion, when the stockholders' agreement, the testimony of Mrs. Quinn, and all the surrounding circumstances are considered together, that the chancery court was warranted in holding that the administratrix was not liable personally by signing the stockholders' agreement. This would have been to make her liable on a promise which she never intended to make and which the parties to the stockholders' agreement never intended she should make. It is clear that it was only intended that she should pledge her dead husband's interest in the assets of the old corporation to the payment of its debts. *Altheimer* v. *Hunter,* 56 Ark. 149, 19 S. W. 496.

Finally, it is contended that the court erred in transferring the case to equity and in not retransferring it to the circuit court. We cannot consider this question. After the case was transferred from the circuit court to the chancery court, a motion was made to retransfer it to the circuit court. This motion was overruled by the chancery court, and no exception was taken to the ruling of the court. Therefore any alleged error in refusing to transfer the case back to the circuit court was waived, and the chancery court had jurisdiction to determine the issues raised by the pleadings.

We have carefully examined the record. It shows that the old corporation was duly organized and prose-

cuted its business in the State of Texas. When it became involved in financial difficulties, its affairs were wound up under the laws of the State of Texas, and no fraud in doing so has been established. The new corporation was duly organized and purchased the assets of the old corporation at a fair valuation. No fraud is shown either in the liquidation of the affairs of the old corporation or in the organization of the new corporation to purchase the assets of the old one. A careful consideration of the whole record leads us to the conclusion that the decision of the chancery court was correct, and it will therefore be affirmed.