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NOTICE OF APPEAL.

(Filed Oct. 6, 1919.)

ATLANTIC COUNTY CIRCUIT COURT.

EVA B. HAINES, *Plaintiff*, vs. EQUITABLE TRUST COMPANY, a corporation, *Defendant*.	Notice of Appeal.

To Charles S. Moore, Esq., Attorney of Defendant:

Take Notice that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in favor of the defendant in this cause.

LEWIS STARR,
Attorney of Appellant.

GROUNDS OF APPEAL.

(Filed Oct. 6, 1919.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

EVA B. HAINES,
Plaintiff,
vs.
EQUITABLE TRUST COMPANY,
a corporation,
Defendant.

Grounds of Appeal.

The appellant states the following grounds of appeal:

1. The learned trial Judge erred in finding under the facts and law of the case, as tried before him, that the defendant was entitled to the possession of the two bonds referred to in the complaint.

2. The learned trial Judge also erred in finding that the defendant was entitled to have said bonds returned to it.

3. That the learned trial Judge erred in directing that judgment be entered against the plaintiff and in favor of the defendant for the latter's costs.

4. Under the facts and law of the case, the learned trial Judge should have found that the defendant

wrongfully took the said bonds from the possession of the plaintiff and wrongfully detained the same.

5. The learned trial Judge should have found that the plaintiff was entitled to possession of said bonds and directed judgment to be entered in favor of the plaintiff and against the defendant accordingly.

6. Under the law and facts of the case, judgment should have been entered for the plaintiff and not for the defendant.

LEWIS STARR,
Attorney of Appellant.

SUMMONS.

(Filed Sept. 8, 1918.)

NEW JERSEY, *ss*:

(SEAL) THE STATE OF NEW JERSEY TO ALFRED J. PERKINS, Sheriff of the County of Atlantic, GREETING: We command you that if Eva B. Haines shall make you secure, you cause to be taken and delivered to her one $1000 bond, Hotel Traymore Company, and one $1000 bond, Great Britain & Ireland, which the Equitable Trust Company of Atlantic City, N. J. took and unjustly detains from her as is said; and that you summon the said Equitable Trust Company to answer the annexed complaint of Eva B. Haines in an action at law in the Atlantic County Circuit Court. And that you notify it that, unless it files its answer to said complaint with the clerk of the said Atlantic County

Circuit Court, at May's Landing, N. J., within Twenty Days after service upon it of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against it.

Witness, Honorable Howard Carrow, Judge of the Atlantic County Circuit Court, at May's Landing, N. J., this nineteenth day of August, nineteen hundred and eighteen.

EDWARD A. PARKER,
Clerk.

THEO. W. SCHIMPF,
Attorney.

COMPLAINT.

ATLANTIC COUNTY CIRCUIT COURT.

EVA B. HAINES,
Plaintiff,
vs.
EQUITABLE TRUST COMPANY,
Defendant.

In Replevin.
Complaint.

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1. On July 10, 1918, plaintiff was, and ever since has been, the owner of the following goods and chattels, to wit: One $1000 bond, Hotel Traymore Company, and one $1000 bond, Great Britain & Ireland.

2. On that day plaintiff was, and ever since has been, lawfully entitled to the immediate possession of the same.

3. On that day, at the Equitable Trust Company Building, defendant wrongfully took said goods and chattels from the possession of the plaintiff and has ever since wrongfully detained, and still wrongfully detains the same.

Plaintiff demands possession of the said goods and chattels and one thousand ($1000) dollars damages for their detention.

THEO. W. SCHIMPF,
Attorney for Plaintiff.

[ENDORSED.]

By virtue of the annexed writ, the plaintiff having given sufficient surety to prosecute the said suit with effect, etc. I did on the sixth day of September, 1918, replevy and summon the said defendant, as within I am commanded, and delivered to the defendant a copy of the said writ and of the complaint annexed thereto and of the endorsements thereon, and no claim of property therein being made, and no bond being delivered to me by the defendant within twenty-four hours, I delivered to the said plaintiff the goods and chattels in the said writ mentioned, as within I am commanded.

Sheriff's fees $5.25.

ALFRED J. PERKINS,
Sheriff.

By MALCOM B. WOODRUFF,
Under Sheriff.

ANSWER.

ATLANTIC COUNTY CIRCUIT COURT.

EVA B. HAINES, *Plaintiff,* vs. EQUITABLE TRUST COMPANY, *Defendant.*	In Replevin. Answer.

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1. Paragraphs one, two and three are denied.

2. Defendant is a trust company incorporated in the State of New Jersey under an act entitled, "An Act Concerning Trust Companies (revision of 1899)" approved March 24, 1899, and the various acts amendatory thereof and supplementary thereto, and by virtue of its incorporation thereunder since the first day of October, A. D. 1912, has been conducting a banking business in the City of Atlantic City, in said state.

3. On or about January 10, 1918, in the usual course of business of defendant in discounting and purchasing commercial paper, one Newlin Haines, the husband of the plaintiff, Eva B. Haines, executed and delivered to defendant and defendant purchased from said Newlin Haines, his promissory note to the order of defendant in the sum of four thousand ($4000.00) dollars, dated January 10, 1918, payable two months after its date. At the same time the

said Newlin Haines delivered to defendant as collateral security for the payment of said note four (4) coupon bonds in the sum of one thousand ($1000.00) dollars each of the Traymore Hotel Company, a corporation of New Jersey, domiciled in the City of Atlantic City, in said state, and one Great Britain and Ireland coupon bond in the sum of one thousand ($1000.00) dollars. That said four Traymore Hotel Company coupon bonds were numbered as follows, 543, 544, 545 and 546. . Said Great Britain and Ireland bond was numbered MM-119826. None of said five bonds were registered. All five of them were the ordinary form of coupon bonds. All five of said coupon bonds were negotiable in the open market upon delivery. Said promissory note executed and delivered by said Newlin Haines to defendant provided among other things that said five coupon bonds above referred to were deposited with defendant as collateral security for the payment of said note or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the said Newlin Haines to defendant, due or to become due, whether existing at the time the said note was executed and delivered or arising thereafter. An exact copy of the general form of said promissory note, together with the endorsement on back of same is hereunto attached and made a part of this complaint and marked Exhibit 1. Said form of promissory note hereto attached is the usual form of note used by defendant in the conduct of its business of discounting and purchasing commercial paper where collateral security is given. The defendant took said four Traymore Hotel Company coupon bonds and the said one Great Britain and Ireland coupon bond from the said Newlin Haines as collateral security

for the payment of said four thousand ($4000.00) dollar note of said Newlin Haines in good faith, believing that all five of said bonds were the property of the said Newlin Haines and that he was the lawful owner of same.

4. On or about February 19, 1918, in the usual course of business of defendant in purchasing commercial paper, the Newlin Haines Company, a corporation of New Jersey, conducting the St. Charles Hotel in the City of Atlantic City, in said state, executed and delivered to defendant, and defendant purchased from said Newlin Haines Company, its promissory collateral note in the sum of fifteen thousand ($15,000.00) dollars, to the order of defendant, dated February 19, 1918, payable four months after date. Said fifteen thousand ($15,000.00) dollar note was in form exactly similiar to the copy set forth as Exhibit 1, attached to this complaint. Said Newlin Haines personally endorsed said fifteen thousand ($15,000.00) dollar note of the Newlin Haines Company on back of said note, underneath the printed form like the copy set forth in Exhibit 1. Said note of fifteen thousand ($15,000.00) dollars of said Newlin Haines Company has not been paid by the said company and is still due and owing to defendant, together with interest thereon from June 19, 1918 last. Said fifteen thousand ($15,000.00) dollar note paid off or replaced prior obligations of said company in that sum personally endorsed by said Newlin Haines which defendant had purchased prior to the date of the purchase by defendant of said four thousand ($4000.00) dollar note of said Newlin Haines.

5. By virtue of the provision set forth above in paragraph 3, contained in said note of Newlin Haines for four thousand ($4000.00) dollars, the collateral

security consisting of said four Traymore Hotel Company coupon bonds and said one Great Britain and Ireland coupon bond, specified in said paragraph 3, are and were entitled to be held by defendant as security for the payment of said fifteen thousand ($15,000.00) dollar note of the Newlin Haines Company because of the personal endorsement of the said Newlin Haines upon the back of said fifteen thousand ($15,000.00) dollar collateral note guaranteeing the payment of said fifteen thousand ($15,000.00) dollar note.

6. Plaintiff wrongfully took from defendant one of said Traymore Hotel Company coupon bonds, to wit, one one thousand ($1000.00) dollar Traymore Hotel Company bond numbered 543, six per cent first mortgage gold bond, principal due January 1, 1927, and said Great Britain and Ireland coupon bond numbered MM119826, one thousand ($1000.00) dollar five and one-half per cent convertible gold note, principal due February 1, 1919.

BY WAY OF COUNTER-CLAIM:

1. All the paragraphs of the answer are made a part of this counter-claim. Defendant demands possession of said goods and chattels, to wit, one one thousand ($1000.00) dollar Traymore Hotel Company bond numbered 543, six per cent first mortgage gold bond, principal due January 1, 1927, and one one thousand ($1000.00) dollar Great Britain and Ireland bond numbered MM119826, five and one-

half per cent convertible gold note, principal due February 1, 1919, and one thousand ($1000.00) dollars damages.

CHARLES S. MOORE,
Attorney for Defendant.

I hereby consent to the filing of the within answer out of time.

THEO. W. SCHIMPF,
Attorney for Plaintiff.

AMENDMENTS TO PARAGRAPHS 3 AND 4 OF ANSWER AND COUNTER-CLAIM.

ATLANTIC COUNTY CIRCUIT COURT.

EVA B. HAINES,
Plaintiff,

vs.

EQUITABLE TRUST COMPANY, of Atlantic City, a corporation of New Jersey,
Defendant.

In Replevin. Amendments to Paragraphs 3 and 4 of Answer and Counter-Claim.

Defendant amends its answer so as to read where the word "answer" appears in the title of the cause, "answer and counter-claim".

Defendant further amends paragraph 3 of the answer and counter-claim, both of which are to read as follows:

3. On or about January 10, 1918, in the usual course of business of defendant in discounting and purchasing commercial paper, one Newlin Haines, the husband of the plaintiff, Eva B. Haines, executed and delivered to defendant, and defendant purchased from said Newlin Haines his promissory note to the order of defendant in the sum of four thousand ($4000.00) dollars, dated January 10, 1918, payable two months after its date. At the same time the said Newlin Haines delivered to defendant as collateral security for the payment of said note and any other liability, present or future, of the said Newlin Haines to defendant, four (4) coupon bonds in the sum of one thousand ($1000.00) dollars each of the Traymore Hotel Company, a corporation of New Jersey, domiciled in the City of Atlantic City, in said state, and one Great Britain and Ireland coupon bond in the sum of one thousand ($1000.00) dollars. That said four Traymore Hotel Company coupon bonds were numbered as follows, 543, 544, 545 and 546. Said Great Britain and Ireland bond was numbered MM119826. None of said five bonds were registered. All five of them were the ordinary form of coupon bonds. All five of said coupon bonds were negotiable in the open market upon delivery. Said promissory note executed and delivered by said Newlin Haines to defendant provided among other things that said five coupon bonds above referred to were deposited with defendant as collateral security for the payment of said note or any note given in extension or renewal thereof, as well as for the payment of any other liability or lia-

bilities of the said Newlin Haines to defendant, due or to become due, whether existing at the time the said note was executed and delivered or arising thereafter. An exact copy of said promissory note, together with the endorsement on back of same is hereunto attached and made a part of this answer and counter-claim, and marked Exhibit 1. Said form of promissory note hereto attached is the usual form of note used by defendant in the conduct of its business of discounting and purchasing commercial paper where collateral security is given. The defendant took said four Traymore Hotel Company coupon bonds and the said one Great Britain and Ireland coupon bond from the said Newlin Haines as collateral security for the payment of said four thousand ($4000.00) dollar note and of other obligations of said Newlin Haines in good faith, believing that all five of said bonds were the property of the said Newlin Haines and that he was the lawful owner of same. Said four thousand ($4000.00) dollar collateral note of the said Newlin Haines replaced and paid off two two thousand ($2000.00) dollar collateral notes of the said Newlin Haines to defendant, one dated December 14, 1917, for the sum of two thousand ($2000.00) dollars, payable three months after date, with three of said Traymore Hotel Company coupon bonds as collateral security, and the other a collateral note dated January 10, 1918, for two thousand ($2000.00) dollars, payable two months after date, with one of said Traymore Hotel Company coupon bonds and the said one one thousand ($1000.00) dollar Great Britain and Ireland coupon bond as collateral security. That said two two thousand ($2000.00) dollar collateral notes of the said Newlin Haines were exactly identical in form

and substance with said four thousand ($4000.00) dollar collateral note, a copy of which is hereto attached and made a part hereof and marked Exhibit 1, except as herein set forth differently. Said two thousand ($2000.00) dollar collateral note of December 14, 1917, being endorsed and guaranteed by the said Newlin Haines personally and the said two thousand ($2000.00) dollar collateral note of January 10, 1918, being endorsed and guaranteed by the Newlin Haines Company, a corporation of the State of New Jersey, operating the St. Charles Hotel in the City of Atlantic City, in said state, of which company the said Newlin Haines was then president.

Paragraph 4 of the answer and counter-claim of defendant is amended so as to read as follows:

4. On or about February 19, 1918, in the usual course of business of defendant in purchasing commercial paper, the said Newlin Haines Company, a corporation of New Jersey, conducting the St. Charles Hotel in the City of Atlantic City, in said state, executed and delivered to defendant, and defendant purchased from said Newlin Haines Company, its promissory collateral note in the sum of fifteen thousand ($15,000.00) dollars, to the order of defendant, dated February 19, 1918, payable four months after date. Said fifteen thousand ($15,000.00) dollar note was in form exactly similar to the copy set forth as Exhibit 1 attached to this complaint. Said Newlin Haines personally endorsed said fifteen thousand ($15,000.00) dollar note of the Newlin Haines Company on back of said note, underneath the printed form like the copy set forth in Exhibit 1. Said note of fifteen thousand ($15,-

000.00) dollars of said Newlin Haines Company has not been paid by the said company and is still due and owing to defendant, together with lawful interest thereon from June 19, 1916 last. Said fifteen thousand ($15,000.00) dollar collateral note replaced and paid off two prior ordinary unsecured promissory notes of said company, one for ten thousand ($10,000.00) dollars, dated November 12, 1917, payable four months after date, and the other for five thousand ($5000.00) dollars, dated November 9, 1917, payable four months after date, and both of said ordinary promissory notes were endorsed by the said Newlin Haines personally.

CHARLES S. MOORE,
Attorney for Defendant.

TESTIMONY.

ATLANTIC COUNTY CIRCUIT COURT.

EVA B. HAINES,
Plaintiff,
vs.
EQUITABLE TRUST COMPANY,
Defendant.

Action at Law.

Chancery Chambers, Atlantic City, N. J., April 4th, 1919.

Before HON. HOWARD CARROW, Judge, without jury.

APPEARANCES:

For Plaintiff: THEODORE W. SCHIMPF, ESQ.
For Defendant: JAMES H. HAYES, JR., ESQ., represented by CHARLES S. MOORE, ESQ., and WALTER HANSTEIN, ESQ.

It is stipulated and agreed between counsel, that a demand was made for the bonds before the writ was issued.

Mr. Moore: I would like to get one or two points on the record before proceeding further. I was delayed in filing the answer and counter-claim in this matter, and Mr. Schimpf very kindly consented that I file it out of time. He, of course, has not replied as yet to the counter-claim, and, of course, I want it to appear that that pleading will be filed, so that the issue will be joined.

Mr. Schimpf: I can state the reply on the record now, I suppose?

Mr. Moore: Yes.

The Court: Cannot counsel agree that the reply may be considered as filed and it will be filed in the course of a few days, in order that the case may be properly at issue?

Mr. Moore: That is it.

HARRY JONES, sworn.

Direct examination.

By Mr. Schimpf:

Q. Mr. Jones, what is your position with the Equitable Trust Company?

A. Secretary and treasurer.

Q. And as treasurer you are in charge of the business affairs of the bank?

A. I am.

Q. Under, of course, the direction of the Board of Directors?

A. I am.

Q. Have you the minute book and the note book of the bank?

A. I have.

Q. Have you them here?

A. Yes.

Q. Will you produce the note book?

Mr. Schimpf: I want to offer the note book in evidence.

(Note book marked Exhibit P1.)

Q. I take it that that note book covers the entire transaction with relation to both of these notes, doesn't it?

A. I believe it does.

Q. Now, will you turn to the entry of the first note borrowed by Newlin Haines on the security of these bonds.

A. I have it.

Q. Read it, please.

A. It is dated Friday, December fourteenth.

Q. What year?

A. 1917. Maker, Newlin Haines. Collateral, three thousand dollars six percent first mortgage Hotel Traymore bonds purchased from Newlin Haines. Date, December fourteenth, 1917. Date of the note, December fourteenth, 1917. Time to run, three months, or ninety-one days. Due March fourteenth, 1918. Amount of note two thousand dollars.

Q. Were there two notes given on the same day?

A. No.

Q. I thought you said the amount of the note was three thousand?

A. No, the amount of the collateral was three thousand.

Q. The note was two thousand and the collateral was three?

A. Yes.

Q. Yes.

A. It has here the interest entry $30.34. Proceeds of the note, nineteen hundred and sixty-nine dollars and twenty-six cents, and the note number, 20,504.

Q. Now, will you turn to the next entry relating to notes borrowed on this collateral?

A. Maker, Newlin Haines.

The Court: Was more money loaned on this same collateral?

A. This is an additional note. The date was Thursday, January tenth, 1918. Maker, Newlin Haines. Collateral, one thousand dollar Hotel Traymore bond, one thousand dollar Great Britain and Ireland. Endorser, Newlin Haines Company. Dated January tenth, 1918. Time, two months, or sixty-one days. Due March eleventh, 1918. Amount of note two thousand dollars. Amount of interest twenty dollars and thirty-four cents. Proceeds nineteen hundred and seventy-nine dollars and sixty-six cents, and the number of the note is 20,734.

Q. Now, those notes were subsequently merged, were they not?

A. They were.

Q. Will you find that entry?

A. There was no entry. It was just a substitution at the request of Mr. Haines.

Q. And the substituted note, who was the maker and endorser of that, and what was its date?

A. It was dated January tenth. Might I see that note?
Q. I don't believe I have it.

By the Court:

Q. Both notes were consolidated?
A. They were consolidated at Mr. Haines' request.
Q. Then was there simply one collateral note?
A. Then there was one.
Q. What was the date of that?
A. I think it is January tenth, 1918.

By Mr. Schimpf:

Q. The subsequent renewal runs to July tenth, so I suppose it was January tenth?
A. That is correct.

By the Court:

Q. What is the amount of that note?

Mr. Schimpf: Four thousand dollars, wasn't it?

Q. Well, is that the fact?
A. Yes, January tenth is the correct date, 1918.
Q. And what was the amount of the new note?
A. Four thousand dollars. He wanted the two notes merged so that they would fall due at one time and that he would only have to make one trip to the bank and draw one instrument.
Q. Then the bank had five thousand dollars worth of bonds for a loan of four thousand dollars?
A. That is correct.

By Mr. Schimpf:

Q. Now, Mr. Jones, turn to the next entry when the first part of this note was paid.

A. The date was March twentieth, 1918.

The Court: How much was paid?

A. Sixteen hundred dollars was paid.

Q. What note was given then in renewal of the other?

A. Note of Newlin Haines, collateral, two thousand Traymore bonds, one thousand Great Britain and Ireland, endorsed Newlin Haines Company, dated March eleventh, 1918, for thirty days, due April tenth, 1918.

By the Court:

Q. March twentieth, 1918, he paid sixteen hundred dollars?

A. That is right.

Q. And gave a new note for how much?

A. Twenty-four hundred dollars.

Q. Payable in what time?

A. Payable in thirty days from March 11th, 1918.

Q. And put up three thousand dollars' worth of bonds as collateral?

A. That is correct.

Q. Well now, did that liquidate the other note? That is the question. Did he wipe out all these antecedent notes?

A. The other notes were paid by this transaction.

Q. Well then, we haven't anything to do with these other notes. You see, there were three notes, two two thousand dollar notes, and then a four thou-

sand dollar note, with collateral. Now, they were all discharged?

A. We call them renewals. We would call this a renewal of the former note.

By Mr. Schimpf:

Q. Now, that twenty-four hundred dollar note, was any payment made on that?

A. Yes.

By the Court:

Q. Give me the date.

A. The date was July tenth, 1918.

Q. How much was paid?

A. Sixteen hundred dollars.

By Mr. Schimpf:

Q. Does your entry show by whose check it was paid?

A. No.

Q. What was taken in place of that?

A. A new note.

Q. For how much?

A. Eight hundred dollars.

Q. What was the date?

A. The date of the note was July tenth, 1918.

Q. What was deposited with that?

A. Two Hotel Traymore bonds and one Great Britain and Ireland.

Q. Have you got that note?

By the Court:

Q. Amounting in all to how much?

A. The bonds amounted to three thousand dollars on their face.

(Note handed Mr. Schimpf by Mr. Moore.)

Q. You mean to say you retained three thousand dollars of bonds as collateral, or were they specified on the $800 note?

A. That is right.

Q. Specified on the $800 note?

A. Eight hundred dollar.

By Mr. Schimpf:

Q. Was any other collateral taken for that note?

A. Not according to this record.

Q. I am just handed the note by Miss Errickson, and the note reads, under "collateral" "Protested collateral note for twenty-four hundred, signed by Newlin Haines, endorsed Newlin Haines, Newlin Haines Company, collateral on the said note being one one thousand dollar Great Britain and Ireland bond, two one thousand dollar bonds of Hotel Traymore Company. Said note was due and protested May tenth, 1918." Isn't that the collateral which was taken with this eight hundred dollar note?

A. That is the collateral, but the entry of it wasn't made on this book.

Q. Then the entry in the book doesn't correspond with the collateral stated in the note as I have read you?

A. Well, the real collateral is the bonds—

Q. The entry on the books does not correspond with the collateral stated on the note as I have read it to you?

A. No.

Q. Now, was that eight hundred dollars subsequently paid off?

A. Not to my knowledge. I don't think it was.

Q. Do you remember a tender having been made in payment of that note?

A. I do, a conditional tender.

Q. Well, would you state what the conditional tender was?

A. The condition was that we were to deliver all of the bonds that we had in our possession that were originally pledged with that note.

Q. Who made the tender?

A. Mr. Haines.

Q. Who was with him?

A. A man. That is all I can tell you.

Q. Do you remember that Mr. Haines and I came down to the bank and I made the tender to you and made the demand for the return of the bonds?

A. I recall that, but I think that was at another time than I had in mind.

Q. So that if you had accepted the eight hundred dollars which we then tendered, this note would now have been paid off entirely?

A. Yes.

Q. Now, Mr. Jones, will you take the minute book of the company.

The Court: I suppose it is conceeded that Mr. Schimpf and Mr. Haines went to the bank and made a demand for the collateral upon tendering the eight hundred dollars?

Mr. Moore: Yes.

The Court: That is conceded?

Mr. Moore: It is.

By the Court:

Q. The bank refused to return the bonds?
A. It did.

By Mr. Schimpf:

Q. Do you find any minutes in the minute book of the company concerning the application of this collateral to any other loans except the notes which we have been speaking of?
A. No.

By the Court:

Q. That is to say, the Board of Directors never took any action regarding the appropriation of the bonds as collateral for any other indebtedness upon which Mr. Haines was obligated?
A. When Mr. Haines made application I consulted with the Board of Directors and they talked it over and then told me to refuse the delivery of the bonds.

Mr. Schimpf: Now, if your Honor please, that was in answer to your Honor's question, and I did not object to it, but it is wholly irrelevant. It does not constitute an action of the Board of Directors and I think it should be stricken out. Not the question, but the answer.

(Question repeated.)

Mr. Schimpf: My question was as to whether the minutes showed, and you put it in a different form, and he answered that he talked it over informally

with the Board of Directors, and they gave him instructions. I think that should be stricken out. It is not in response to the question, and it is not relevant to the issue.

Mr. Moore: I would like to be heard on that before it is stricken out.

The Court: I would like to hear you now.

Mr. Moore: May it please the Court, it is not necessary, to constitute an action on a matter of this kind by a Board of Directors, that it be recorded in the minutes. There are many things that are done officially by the Board of Directors of a bank or trust company which are not recorded in the minutes. For instance, it may be presented to the Board that John Jones, who now has a note of five thousand dollars, desires to renew that note for another four months period by paying two thousand dollars on account of the same. The matter is brought up, discussed, the president may say, "Is there any objection to that on the part of any director present?" No response. The president says, "Very well, let that action be taken." So on down through the course of business, until we reach this transaction like the one in question, where it is presented to the Board of Directors that Newlin Haines, who has already paid sixteen hundred dollars on account of a collateral note of twenty-four hundred dollars, desires the return of two of the three bonds that were collateral to that loan.

The Court: I have not the slightest doubt but what you may prove this. The only question now

is whether it is responsive to the question which the Court propounded.

(Question and answer repeated.)

The Court: The motion to strike out is denied.

(Exception noted for plaintiff.)

By Mr. Schimpf:

Q. Do you find in your minute book any minute of the talk and instruction?

A. We don't put that in the minutes.

Q. No, but do you find it in the minutes?

A. No.

Q. Do you find in the minutes of the Equitable Trust Company any minute indicating any action of the Board of Directors with reference to this collateral?

A. Only its acceptance as security for the loans.

Q. Will you turn to that?

By the Court:

Q. The specific loans?

A. Yes.

Q. That you have already indicated?

A. Yes.

Q. No other loans?

A. No.

Q. The minutes, then, are silent respecting any other loan transactions so far as the application of these bonds is concerned than those which you have specifically identified?

A. Except that we specify that it is a collateral

note, collateral form. That is always distinguished from the promissory note, plain promissory note.

The Court: Would you mind reading into the record, if there is no objection, the form of that note now?

Mr. Moore: I will read the copy of the original note of December fourteenth, 1917, of Mr. Haines personally. "$2000.00 Atlantic City, N. J., December 14th, 1917. Three months after date, For Value Received, the undersigned promises to pay to the order of the Equitable Trust Company, at its Banking House in Atlantic City, N. J., two thousand dollars, in United States gold coin or its equivalent, having deposited with the said company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said company, due or to become due, whether now existing or hereafter arising, the following property, viz: $3,000 six percent first mortgage Hotel Traymore bonds, of a market value estimated by the undersigned at $ and the undersigned agree to deliver to the said company additional securities to its satisfaction should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession of the said company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said company.

On the non-performance of this promise, or upon the non-payment of any liabilities above mentioned,

or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then, and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of said company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said company or its president or treasurer, without either demand advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all of the said liabilities to the said company, as it or its president shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said company, at its option, at any time to appropri-

ate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due Newlin Haines." The endorsement reads as follows: "In consideration of one dollar paid to the undersigned, and of the making at the request of the undersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to the Equitable Trust Company of Atlantic City, N. J., its successors, endorsees, or assigns, the punctual payment, at maturity, of the said loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time or the time of payment of the said loan extended, without notice to or further assent from the undersigned, who will remain bound upon this guarantee, notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof."

Mr. Schimpf: I offer the minute book in evidence.

(Minute book marked Exhibit P2.)

Cross-examination.

By Mr. Moore:

Q. When the Board of Directors of the Equitable Trust Company first granted this two thousand dollar collateral loan to Mr. Haines on December four-

teenth, 1917, and deposited these bonds as collateral, or at any subsequent time of Mr. Haines' personal loans that you have testified to, and the other loans that you have referred to of the Newlin Haines Company, upon which Newlin Haines was personally an endorser, was there any discussion of the collateral that Mr. Haines had personally pledged with respect to any liability of his upon these other obligations of the company?

Mr. Schimpf: I am going to object to that question. My objection is on the first ground that it is not cross-examination. This is my witness. They can ask him that as a part of their defense when they call him. He was not examined as to any discussion of the Board of Directors at the time this loan was made. The second objection is that the question is so hopelessly involved, that it is impossible to get such an answer that a motion to strike irrelevant parts might possibly be made. There is too much in that question, entirely. He has asked the witness for any number of conclusions, and it is not cross-examination.

The Court: Strictly speaking, it is not cross-examination.

NEWLIN HAINES, affirmed.

By Mr. Schimpf:

Q. Mr. Haines, you have heard the note transactions as they were recited by Mr. Jones from the books of the company. They are correct, are they, according to your recollection?

A. I think so, as near as I can remember.

Q. You made a note to the Equitable Trust Company which was eventually, or several notes which were eventually combined in one note for four thousand dollars?

A. Yes.

Q. You deposited four Hotel Traymore bonds of the sum of one thousand each and one Great Britain and Ireland bond as collateral security for the payment of that note?

A. Yes.

Q. Subsequently you paid sixteen hundred dollars off of that note?

A. Yes.

Q. And then another sixteen hundred?

A. Yes.

Q. And then tendered eight hundred in payment of the balance?

A. Yes.

Q. Whose bonds were they?

A. Mrs. Haines.

Q. Eva B. Haines, the plaintiff in this suit?

A. Yes.

Q. How did you have them in your possession?

A. I borrowed them from her to get a loan at the bank.

Q. For yourself or for somebody else?

A. For myself.

Q. In accordance with your understanding with her, you pledged them for a loan of yours, did you not?

A. Yes.

Q. Now, at the time this four thousand dollar loan was negotiated with the Equitable Trust Company, were you the maker of any note in the Equitable Trust Company?

A. I was the endorser.

Q. I asked you if you were the maker?

A. No.

Q. You were, however, the endorser of a note there?

A. Yes.

Q. And that note was discounted for whose benefit?

A. The Newlin Haines Company.

Q. At the time this note was made, had the note of the Newlin Haines Company been called?

A. No.

By the Court:

Q. Was that a collateral note, Newlin Haines Company?

A. Not at that time, no.

Q. It was a straight note?

A. Straight note.

Q. Had it been protested?

A. No.

Q. When you made demand for the collateral—

A. Then it had been, yes. I presume it had.

Q. When you and Mr. Schimpf made the tender of the eight hundred dollars and asked to have the bonds returned to you, had the Newlin Haines note been protested?

A. No, Judge, I can't answer absolutely correct, because I can't recall exactly the continuance of the note, that is, the date of it.

By Mr. Schimpf:

Q. Well, at the time these bonds were deposited as collateral to the loan of four thousand dollars,

there was no trouble with the Newlin Haines note, was there?

A. No.

Q. I mean the Newlin Haines Company note.

A. No.

Q. Subsequently, what action did the bank take with respect to the Newlin Haines Company note?

A. They asked for additional collateral. The company was going to get out some third mortgage bonds, and I told Mr. Jones about it, and when the company had the bonds, he asked for additional collateral, which we gave him what was requested.

Q. Now, Mr. Haines, at that time did you make a collateral note for the Newlin Haines Company?

A. I don't remember whether I did or did not.

Q. Did you ever read any of these notes that you signed?

A. No.

Q. Do you know what is in a collateral note now?

A. I know what is in it now, yes.

Q. You couldn't sit there and tell me what is in it, could you?

A. I couldn't tell you all that, no.

Q. You mean you know what is in it with reference to these bonds now?

A. Yes.

Q. Did you know it when you signed it?

A. No, I didn't know it worked that way.

Q. Did you have any intention of pledging Mrs. Haines' bonds as collateral security for the Newlin Haines Company?

Mr. Hanstein: I object.

A. I did not.

The Court: I doubt the relevancy of such evidence. He is presumed in law to have known the contents of that instrument, and, of course, cannot excuse himself for not knowing it unless its contents were misrepresented to him, his signature was fraudulently procured.

Mr. Schimpf: I used to think that, too, but I am rather impressed with some personal arguments I have had with counsel on the other side regarding the great responsibility that rests upon a person who hands another one a contract full of fine print and does not read it to him or acquaint him with its contents, and there is a responsibility on the part of the bank here, to acquaint people with the contents of a collateral note.

The Court: No, our courts have never gone that far. The farthest they have ever gone is to say this: the person who puts his name to the instrument is legally presumed to know its contents unless there has been a fraudulent misrepresentation of the contents, he relied upon the other man to tell him what was in the paper, and he was misled, defrauded, in signing the paper.

Mr. Schimpf: Suppose a man goes to a bank. He is entitled to have a lot of confidence in a bank and a lot of confidence in its treasurer. He says, "I want to borrow four thousand dollars for my account on the strength of this collateral security." The treasurer says, "All right, we will loan you that money on this security." Not a word is said about any other notes which might be in the bank or anything of that kind, a separate transaction. He hands him out a thing that is covered with so much fine

print that nobody in the world can remember what is on it. He says, "Sign that and this thing will go through all right." He signs it and it goes through all right, except that he loses his bonds. Is not there some responsibility, in your judgment, on the bank that hands him out such a collateral note, when there is a plain bona fide single, limited transaction? Is not the witness entitled to answer—

The Court: I am not going to decide it at this moment, but you know the state of my mind. However, if you can convince me and show me where any court has ever held to your view, I shall be, of course, glad to read such a decision. I do not think the courts go that far. Business men especially are presumed to know the contents of writings, and if they do not take the pains to read what is in the instrument, they are chargeable with the knowledge, anyhow, unless they are blind or the contents are misrepresented, because these papers are written in very plain unambiguous language and language very comprehensive, and there is a good deal of writing, and it would be a very good thing if we would all be particular to read the instruments we sign. However, if you can find any authority sustaining your view, I shall be glad to hear it. I am not going to shut you out from a reasonable opportunity.

Q. Mr. Haines, when you paid the sixteen hundred dollars off on this note on March twentieth, 1918, did you have any conversation with Mr. Jones?

A. Was that when I got the first two bonds off?

Q. Yes.

A. Yes, I told Mr. Jones that I wanted to take the bonds down as quickly as I could, that they belonged to Mrs. Haines, and I wanted to get them returned to her.

The Court: That is after the bonds were in their possession?

A. Yes.

Q. Now, in response to that statement, did the bank give you back any of the bonds?

A. Give me back two of them, yes.

Q. They gave you back two of the bonds? Two Traymore bonds, were they?

A. Two Traymore bonds.

Q. The note of the Newlin Haines Company with your endorsement on the back of it was there, wasn't it, at that time?

A. Yes.

Q. You don't remember, do you, when they asked for additional collateral on the Newlin Haines note? Was it before this time that you got these bonds back or subsequently?

A. I couldn't answer definitely. If I had the date of the payment—

Mr. Schimpf: Does the Court mind if we ask Mr. Jones when the thirty thousand dollars of second mortgage bonds were deposited? Will you tell us that?

Mr. Moore: The collateral note for fifteen thousand is dated February nineteenth, 1918.

Mr. Schimpf: What is the collateral?

Mr. Moore: Thirty thousand Newlin Haines Company, St. Charles Hotel third mortgage, six percent gold bonds.

Q. Before you received back these two bonds, you

had deposited thirty thousand dollars of third mortgage bonds of the St. Charles' Hotel?

A. Yes.

Q. As collateral security of the Newlin Haines Company. The two transactions had nothing to do with each other, had they?

A. Not at all.

Q. And you received back two of the Hotel Traymore bonds?

A. Yes.

Q. Did you give those bonds back to Mrs. Haines?

A. Yes.

Q. Now, on July tenth, 1918, did you pay off sixteen hundred dollars more on account of the note?

A. Yes.

Q. And who did you see at that time?

A. Miss Errickson.

Q. Do you know what Miss Errickson's position is with the bank?

A. No, I don't know what her capacity is.

Q. What?

A. No, I do not.

Q. Is she note clerk?

A. I very often transacted my notes with her.

Q. She is at the note clerk's window, isn't she?

A. Yes.

Q. Did you have any conversation with her at the time you paid the sixteen hundred dollars off?

A. Yes, I told her I had Mrs. Haines' check and I wished to get two of the bonds, gave her the check and told her it was not a certified check and as soon as it was paid I would come down and get the bonds or send for them. She said, "Well, if you come I will give them to you, and if you don't come, send a boy and give him an order and I will give them to the boy."

Q. I show you what purports to be a check on the Commonwealth Title Insurance and Trust Company of Philadelphia, dated seventh month tenth, 1918, to the order of Equitable Trust Company, sixteen hundred dollars, signed E. B. Haines and ask you if that is the check that you paid this sixteen hundred dollars with?

A. Yes.

Q. And that was delivered to Miss Errickson at the note clerk's window of the Equitable Trust Company?

A. That was delivered to her at a desk in Mr. Jones' office. Mr. Jones wasn't there.

Mr. Schimpf: I offer that check in evidence.

(Check marked Exhibit P3.)

Mr. Schimpf: The check is canceled and bears the endorsement of the Equitable Trust Company.

Q. I show you a note for eight hundred dollars, dated July tenth, 1918, at two months, the collateral stated therein being one bond, Hotel Traymore Company, one thousand dollars, note signed Newlin Haines on collateral form, and ask you if that is a note that you delivered to Miss Errickson at the time you delivered the check for sixteen hundred dollars?

A. Yes.

Q. Did she take both the note and the check?

A. Yes.

Mr. Schimpf: I offer the note in evidence.

(Note marked Exhibit P4.)

Q. I show you a note dated June tenth, 1918, twenty-four hundred dollars, one month, to the Equitable Trust Company, signed Newlin Haines, and the collateral stated therein being as follows: "Protested collateral note for twenty-four hundred dollars, signed by Newlin Haines, endorsed Newlin Haines, Newlin Haines Company, collateral of the said note being one one thousand dollar bond Great Britain and Ireland, two one thousand dollar bonds Hotel Traymore Company, said note was due and protested May tenth, 1918." This note is canceled. Was that the note that you paid by giving the Equitable Trust Company the note just recited for eight hundred dollars, and the check for sixteen hundred dollars?

A. Yes.

Q. And when did you receive this from the Equitable Trust Company?

A. When they wouldn't give up the money, then I went down and Mr. Jones insisted on signing that other note, and he gave me back the eight hundred dollar note and this note.

Q. Gave you back the first eight hundred dollar note you had signed and this note marked canceled?

A. Yes.

Mr. Schimpf: I offer this note in evidence.

(Note marked Exhibit P5.)

Q. It was on July tenth, Miss Errickson told you you could have your bonds either by calling for them or sending for them?

A. Yes.

Q. How long was it after that when the bank changed its mind?

Mr. Hanstein: I object to that. Miss Errickson's statement is no evidence of the bank's transaction. It is not conclusive that she had authority to make the statement that it is alleged she made.

The Court: The Court will have to deal with that question. I understand what the question means. He is taking the strongest position he can against the bank. He is relying upon the action of Miss Errickson, and now he wants to know by this question, how long it was before this situation changed down at the bank respecting this matter. Whether or not Miss Errickson's conduct at the time the note was given and the collateral asked to be returned concluded the bank from contrary action, of course, is a question the Court has to decide. I do not think you are harmed by the question.

(Question repeated.)

A. Why, I don't remember the number of days. It was a short while.

Q. Several days?

A. Yes.

Q. And how did you find out about the changed attitude?

A. When I went down after my collateral.

Q. Did you go down after them or send down after them?

A. No, I went down after them.

Q. Who did you see when you went down there?

A. I saw Mr. Jones then.

Q. And that was sometime, a few days after July tenth?

A. Yes.

Q. What did Mr. Jones say to you?

A. He said the Board of Directors were going to hold the bonds, wouldn't give them up.

Q. That is what he said to you?

A. Yes.

Q. Did he offer to return the sixteen hundred dollars that Miss Errickson had taken from you?

A. No, he did not.

Q. He kept that, did he?

A. He kept that.

Q. So that the transaction stands now that the bank got sixteen hundred dollars that you wouldn't have paid except on the promise to return the bonds; isn't that so?

A. Yes.

Q. They have got the bonds and the sixteen hundred, both?

A. Yes.

Q. Would you have paid the sixteen hundred dollars off on that note, knowing that they were going to hold those bonds?

A. I would not, no.

Q. Mr. Haines, the Newlin Haines Company has at the Equitable Trust Company, all of the collateral that it originally deposited there, has it?

A. I believe so. To my knowledge.

Q. So far as your knowledge goes?

A. As far as my knowledge goes, yes.

Q. Was there any demand ever made on you as endorser of that note to pay it?

A. No.

Q. Was there any demand made on you as endorser of that note to furnish additional collateral?

A. No.

Q. The bank holds the note yet, does it?

A. As far as I know.

Q. And holds all the collateral yet?

A. Yes.

Q. And it has collateral that is double the amount of the note, has it not?

A. Yes.

Q. And that collateral consists of third mortgage bonds affecting the Hotel St. Charles' property?

A. Yes.

Q. How much property is there there of the Hotel St. Charles? What is the size of it and what does it consist of?

A. It is a lot two hundred feet on the ocean front by four hundred and forty deep, on the St. Charles' Place side and two hundred and eighty-two feet on the New Jersey Avenue side.

Q. Does it run all the way from St. Charles' Place to New Jersey Avenue?

A. Yes.

Q. What are the improvements on that property?

A. There is a frame building, and a fireproof building and stores.

Q. What is the value of the total property?

A. Two million dollars, I should think.

Q. Two million dollars? How many mortgages are there ahead of these third mortgage bonds?

A. There is eight hundred and fifty thousand ahead.

Q. Eight hundred and fifty thousand ahead of the third mortgage bonds?

A. Yes.

Q. And how much is that issue for?

A. I think it is two hundred and fifty.

Q. Two hundred and fifty thousand?

A. I think that is what it was.

Q. So that the total mortgages against this property amount to one million one hundred thousand dollars?

A. Yes. The third mortgage bonds were none of them issue except as collateral. There have only been two bonds sold of a hundred dollars each.

Q. How much of the two hundred and fifty thousand authorized for third mortgage bonds have actually been issued?

A. The Equitable has thirty thousand and there are about twenty-seven thousand held by Mrs. Jeffreys, I think, in Mt. Holly, and Mrs. Haines has—I don't remember just how many she has. About—

Q. I don't care who has got them. I want to know how many are actually issued of the two hundred and fifty thousand dollar item.

A. I should think about a hundred thousand, as collateral.

Q. So that the total mortgages against the property amount to approximately nine hundred and fifty thousand dollars?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And you say the property is worth two million dollars?

A. I should think so.

Cross-examination.

By Mr. Moore:

Q. Mr. Haines, how long have you been in business?

A. Seventeen years.

Q. What is that?

A. About twenty years.

Q. You were the owner of the St. Charles' Hotel before you formed the Newlin Haines Company?

A. Yes.

Mr. Schimpf: That is objected to as not cross-examination.

Q. How long have you been in business in Atlantic City?

Mr. Schimpf: That is objected to as not cross-examination.

The Court: The objection is overruled.

A. About twenty years, I guess.

Q. In that time have you ever had, for yourself or for the Newlin Haines Company, or for anyone else, any other note transactions in banks other than those to which you have just testified?

A. Yes.

Q. How many different note transactions in the course of twenty years' experience have you had in banks?

A. I don't know.

Q. Have they been many or few?

A. Been several.

Q. Several? Do you mean by that three or four?

A. Oh, a number.

Q. Isn't it a fact that you have had a very large number of them?

A. Yes.

Q. Aren't you the one who financed and promoted the Newlin Haines Company, brought it into being?

A. I was the owner of the property, sold it to the

Newlin Haines Company. I didn't do the financing. Other people did the financing.

Q. Didn't you go around yourself to various places, New York and Philadelphia, in your efforts to finance these various mortgage placements that you have put on the property?

A. Yes.

Mr. Schimpf: That is objected to as wholly irrelevant.

Mr. Moore: This gentleman testified that he never read that note, had no knowledge of its contents, and never knew at all—

The Court: I see. You are trying to show the improbability of his story. Well, proceed. I don't think this gentleman would have us believe that he was ignorant of the general contents of the collateral note, do you?

A. No, I know generally the contents, yes. I know what the general contents were.

By the Court:

Q. What did you think the general contents were? What was in your mind? You were handed a collateral note. What did you think that was?

A. I didn't think that a collateral note—that the two—that one would affect the other. I thought the collateral on a certain note could be sold, but not my other collateral.

Q. You didn't think it had any effect on the other?

A. No.

Q. You didn't take the pains to read the note carefully; is that the idea?

A. I didn't read the note there at all. I just signed it.

Q. Did you ever read a collateral note?

A. Not of that form. I have read other forms, one about quarter as big as that.

Q. Are they all about the same?

A. I don't know whether they are all just the same or not.

By Mr. Moore:

Q. Mr. Haines, did you ever have any other collateral notes other than this transaction with the Equitable Trust Company?

A. Yes.

Q. How many?

A. Oh, not very many.

Q. Not very many?

A. No. Very few.

Q. What other collateral note forms did you read? What banks?

A. Of no banks as I know of.

The Court: Unless this turns out to have some legal significance, I do not think the testimony is of any value one way or the other, and if it turns out to be of any value and you desire to further cross-examine Mr. Haines, I will give you an opportunity, but my present opinion is that there is nothing in that position.

Mr. Moore: Mr. Schimpf, have you the bonds I served notice to produce?

Mr. Schimpf: No.

The Court: These were ordinary bonds that passed by delivery, were they not, Mr. Haines?

A. Yes, Traymore bonds.

Mr. Schimpf: I have not anything you asked me to produce.

Mr. Moore: I served a notice to produce the original bonds taken in replevin. I wanted to produce them in evidence here because I think it is an essential part of our case.

The Court: Upon what theory?

Mr. Moore: To show they were negotiable.

The Court: He said they were.

Q. They said so on their face, did they not, that they passed by delivery?

A. I don't know if they stated so, but I know they were negotiable.

Q. There was nothing on them to indicate to whom they belonged?

The Court: Do you deny that the bonds passed by delivery and that the person who had possession of the note and bonds apparently was the owner?

A. Apparently, until after the first payment was made. After the first payment was made Mr. Jones knew who the owner of the bonds was.

The Court: He said when he took the bonds there, apparently they belonged to him so far as anything on the bonds showed, but on the next payment he told Mr. Jones that the bonds belonged to his wife.

Q. When was that, Mr. Haines?

A. I don't remember the date.

Q. Was it when you paid the sixteen hundred and got the first two bonds?

A. When I got the first two bonds back. On the first deliverance of bonds Mr. Jones knew.

Q. You told him then they were Mrs. Haines' bonds?

A. Yes.

Q. Where were you then when you told him that?

A. At Mr. Bacharach's office or his own, I don't remember which. We generally went into Mr. Bacharach's office.

Q. Who were present?

A. There was no one present at that time.

Q. Tell just exactly what you said to Mr. Jones.

A. I don't remember exactly what I said. I told him I wanted to get the bonds down as quickly as I could, as they were the property of Mrs. Haines. It was in Mr. Bacharach's office, as I remember, and there was no one else in there.

Q. What did Mr. Jones say when you told him they belonged to Mrs. Haines?

A. He said, "I don't blame you for wanting to get them down."

Q. Did Mr. Jones express any surprise that you pledged Mrs. Haines' bonds for your personal debt?

A. No.

Q. None whatever?

A. No.

Q. Took that as the usual thing?

A. He didn't express any surprise.

Q. Where did Mrs. Haines get these bonds from?

A. Bioren and Company.

Q. When?

A. I don't know.

Q. When was your first knowledge obtained that she had the bonds?

A. When she bought them.

Q. Were you with her when she bought them?

A. No.

Q. When did you first learn that she had bought them?

A. I don't know. When she bought them. I ordered the bonds for her myself.

Q. You ordered the bonds for her?

A. Yes.

Q. Did you pay the money for her?

A. No, she paid her own money.

Q. Did you take the money to Bioren and Company for her?

A. No, I did not. She mailed it.

Q. To whom were the bonds delivered?

A. I don't know whether they came down in her name or whether they were sent to me. They were her bonds.

Q. They were sent to you by mail?

A. They were sent by mail.

Q. Registered mail?

A. They must have been. Either mail or express. I don't remember.

Q. They came in your name, you think?

A. I don't know. I suppose if it was her check, they would naturally come in her name. They came in either by mail or express.

By the Court:

Q. Was it her money?

A. It was her money.

Q. Real?

A. Real money from her mother's estate.

Q. Money that didn't come through you?

A. No, absolutely not. Not in any shape at all. No connection with me, directly or indirectly at all.

By Mr. Moore:

Q. And you don't recollect when the bonds were bought?

A. No. Several years ago. When the Traymore were selling their bonds.

Mr. Moore: Witness is shown Hotel Traymore Company bond, number 545, six percent first mortgage sinking fund gold bond, and asked to examine it and say if that was one of the bonds—

A. I can't say if it was one of the bonds they got. It may be something else. I wouldn't say that.

Q. Was it a bond like that?

A. It was a bond like that, yes. That is a thousand dollar bond, isn't it?

Q. Yes. Where are the bonds that were replevined in this case?

A. In Philadelphia.

Q. In whose custody?

A. Mrs. Haines.

Mr. Moore: I served a notice on defendant to produce those bonds, and now Mr. Haines testifies they are in her possession in Philadelphia.

Mr. Schimpf: There was not any notice served. I would try to produce anything I could.

Mr. Moore: You acknowledged service of it. I have a copy right here and I filed the original at Mays Landing.

The Court: Will you gentlemen not make a stipulation respecting the bonds? What is the use of wasting time over that?

Mr. Schimpf: Why doesn't Mr. Jones or Miss Errickson, who had the bonds in their possession, for years, testify what the bonds were? I do not know. I do not know whether they were registered or unregistered or what they looked like. I saw them when the sheriff handed them to me and I sent them to Mrs. Haines. Miss Errickson knows and Mr. Jones knows, and they can testify. For that matter, if they will state what the bonds were, I will stipulate to it.

Mr. Moore: This is one of the bonds that I hold in my hand.

Mr. Schimpf: I concede that the other bonds are in the same form, that is, the Traymore bonds. Of course, the Great Britain and Ireland bond was not in that form, but it probably was an unregistered bond. I assume that the bank would not have taken it if it had not been.

Mr. Moore: Do you concede that the Great Britain and Ireland bond was a coupon bond which passed by delivery similar to these Traymore bonds?

Mr. Schimpf: If Mr. Jones says it was, I do. I never saw the bond.

Mr. Jones: It was.

Mr. Schimpf: Then it is.

Q. Now, Mr. Haines, did you ever write anything thing to the Equitable Trust Company concerning these bonds?

Mr. Schimpf: Why not make it more definite?

Mr. Moore: He is on cross-examination now.

The Court: That is a preliminary question. The question should be answered yes or no.

A. I don't remember.

Mr. Moore: Witness is shown letter head St. Charles' Place and Boardwalk, Atlantic City, New Jersey, dated January third, 1918, and is asked if you wrote that letter to Mr. Harry Jones, treasurer of the Equitable Trust Company, Atlantic City?

A. That is my signature.
Q. You sent that letter, did you not?
A. Yes.

Mr. Moore: Witness is shown another letter, "St. Charles', Atlantic City, New Jersey, Newlin Haines Company, second month thirteenth, 1918, Mr. Harry L. Jones, City. Dear Mr. Jones:" is that your writing and signature?

A. Yes.

(First letter referred to marked D1 for identification. Second letter referred to marked D2 for identification.)

Mr. Moore: Witness is shown a letter St. Charles' Hotel heading, dated March eighteenth, 1918, ad-

dressed Mr. Harry Jones, treasurer, Equitable Trust Company, and asked if your signature is to that letter?

A. Yes.

(Letter marked D3 for identification.)

Mr. Moore: Witness is shown a receipt, Equitable Trust Company heading, dated July tenth, 1918, received of Equitable Trust Company, two coupons, thirty dollars each, sixty dollars, from bonds of Hotel Traymore Company, held as collateral. Is that your signature?

A. Yes.

Q. And likewise another receipt for coupons dated July twenty-fourth, 1918?

A. Yes.

(Papers marked D4 for identification, and D5 for identification.)

Q. Mr. Haines, weren't you surprised that the Equitable Trust Company continued this loan with you after March when you say that you told Mr. Jones that the bonds did not belong to you?

A. No, I wasn't surprised.

Q. You thought that was the usual course of business, did you?

A. Yes.

Q. Do you think they would have lent the money to you in the beginning if you had told them they were her bonds?

A. As far as I know, they would. I didn't know anything to the contrary to that.

Q. You thought you could go there and tell them they were her bonds and get a loan for yourself on them, did you?

A. Sure.

Q. You didn't do that, however, until after the loan had been made?

A. I don't remember saying anything at the time.

Q. Nothing was said?

A. I don't think so. Not that I remember.

Q. Mr. Haines, isn't it a fact that there is nine hundred thousand in mortgages ahead of this thirty thousand dollars worth of bonds that you refer to?

A. No.

Q. On the St. Charles'?

A. Not unless the receiver's certificates could be counted as a mortgage, and they are about to be paid off, or there is money to pay them off.

Q. There is a first mortgage of five hundred thousand?

A. Yes.

Q. That is on the St. Charles'?

A. Yes.

Q. There is a first mortgage of one hundred and ninety-one thousand and ninety-one dollars on the lot on which the stores are?

A. I don't remember the exact amount.

The Court: What has that to do with it?

Mr. Moore: They brought out the fact that we had valuable security.

The Court: Suppose you had valuable security, what has that to do with it?

Mr. Moore: Nothing, according to my theory, but it may have to do with the equities, that is all.

Q. These very thirty thousand dollars worth of bonds we hold, and you say Mrs. Haines holds some of them, too—

The Court: It is a strict legal question. You either have a right to these bonds or you have not. Equity does not enter into it. You either have a right to hold those bonds for any other indebtedness that was then existing or might be created afterwards, you either had a strict legal right to hold the bonds under those circumstances, or you had not. That is all there is to the case. It makes no difference how much collateral they had.

Mr. Moore: I was going to show that these very bonds which we hold, the receiver has already threatened to attack them.

The Court: If you think there is any value in that evidence, you can proceed, but I doubt it very much.

Mr. Moore: I do not think there is. I think it is a strict question of law, as I said in the beginning.

Q. Now, awhile ago, Mr. Haines, when you were being examined by Mr. Schimpf and you were testifying about going down to the bank, you used this expression, "I went down after my collateral". What did you mean by that expression?

A. Collateral I deposited there of Mrs. Haines'.

Q. Then you should have said you went down after her collateral, shouldn't you?

Mr. Schimpf: That is objected to.

The Court: That is rather captious. That would

not be it. It was after his collateral. According to his theory, he put up Mrs. Haines' bonds as collateral for his loan.

Q. Now, Mr. Haines, at the time that you got this first two thousand dollars on this collateral on December fourteenth, 1917, what did you do with that money?

A. What did I do with it? Loaned it to the company.

Q. You deposited it to their credit the next day, did you not, in the Equitable Trust Company?

A. No, it was transferred over then, right away.

Q. Didn't you deposit it first in your account or wasn't it credited in your account and then you made a deposit of your check to the order of the company?

A. I don't think so.

Mr. Schimpf: Objected to as irrelevant.

The Court: I do not see that that has anything to do with it.

Mr. Moore: I think it has, to show that all of this was for the company.

The Court: Suppose it was, what has that to do with it? He had a right to take that money and throw it down the sewer. He had a right to give it to Mrs. Haines. He had a right to do anything he pleased with it. The bank would not be affected by anything he did with the money.

Mr. Moore: I am endeavoring to show that these transactions in the bank here, whereby he put up this collateral personally were for the benefit of the company.

The Court: Granting that to be so, what has that to do with the case? You, as I have pointed out, had a strict legal right to appropriate that collateral to the other indebtedness or you had not. That is all there is to this case on the facts. I do not want to shut out anything, but it is immaterial what he did with the money. That would not change the character of the contract.

Mr. Moore: As I understood it, the testimony of Mr. Haines was that this loan—that these bonds were given to him by Mrs. Haines for a loan for his personal use.

The Court: I do not care what the purpose was, and I do not think the law cares. He got those bonds which passed by delivery into his possession. The bonds were transferred by him to the bank as collateral security for a loan, and he says that at the time the transaction went through he never revealed to the bank anything about the ownership of the bonds, so presumably they took the bonds as his property. There is that situation. Now, if you had a right to retain the bonds under the circumstances presented by this case in order to fortify the bank against the outstanding indebtedness, or the accruing indebtedness, that is the end of the case.

Q. Mr. Haines, when you first went to the bank in December of 1917, and procured this first loan of two thousand dollars with this collateral that has been mentioned, and then when you got the additional loan of two thousand on January tenth, 1918, with more of these other bonds in question as collateral, were you then an endorser on two personal notes of the Newlin Haines Company to the extent of fifteen thousand dollars in that bank?

A. Two personal notes? You don't mean collateral notes?

Q. No, unsecured notes.

A. I believe so.

Q. Well, isn't that a fact?

A. I believe so.

By the Court:

Q. And you didn't say anything to Mr. Jones about the bonds belonging to Mrs. Haines until March twentieth, 1918, when you paid the sixteen hundred dollars?

A. When I got the first bonds back.

Recess taken until 1.15 P. M.

Afternoon Session, 1.15 P. M.

NEWLIN HAINES, resumed.

Further cross-examination.

By Mr. Moore:

Q. Did your wife know what you intended to do with the money from these loans from these bonds?

A. No, she just loaned it to me, is all. She loaned me the money.

Q. She didn't know you intended to use it for the hotel company?

A. Not that I know of.

Mr. Schimpf: I think the Court already ruled that was not relevant.

The Court: I cannot seem to understand what significance that has. It may have. You may be entirely right, Mr. Moore. I have pointed out to you what I conceive to be the sole question in this case, regardless of any private understanding he may have had with his wife. How would that affect the bank if the bank had a right to appropriate those bonds to that other indebtedness?

Mr. Moore: Well, your Honor, he comes in here and says now that in March of 1918, he communicated the knowledge to the bank then that they did not belong to him but belonged to his wife.

The Court: But the bank already had the bonds.

Mr. Moore: That is true, and of course our theory is the fastening of the right to the possession of the bonds prior to that time.

The Court: I understand that. If the bank had a right to hold those bonds under that collateral agreement for that other indebtedness, what has all this to do with the question?

Mr. Moore: It seems to me this: we are going to set up an issue here that we did not have this knowledge at the date he is contending for, and I want to show that Mrs. Haines may have had knowledge that this was for the company.

The Court: Well, I do not want to interfere. It may be right.

A. I borrowed it for my own account entirely from her.

Q. When you took them from her, did you intend to use it for the hotel company, the loan?

A. Yes.

Mr. Schimpf: That is objected to as irrelevant.

Q. What use did you tell her you intended to make of the money?

The Court: The objection is overruled on that other question.

(Exception noted for plaintiff.)

A. I say it was useless to tell her. I didn't have to tell her what I was going to do with the money.

Q. Did you tell her?

A. I told her I wanted to borrow the bonds to obtain a loan for myself.

Q. That is what you told her?

A. Yes.

Q. You mentioned nothing about the hotel company?

A. No.

Q. Did you tell her how much you wanted to borrow on them for yourself?

A. I don't remember. No, I did not. I wanted to get as much as I could on them, of course.

Q. Did she ask you what you needed for yourself—

A. No, she didn't.

Q. —that required that money?

A. No.

Q. Now, at the time you had this conversation with Mr. Jones that you referred to, and in which you say you told him in March, 1918, that they be-

longed to Mrs. Haines, did you at that time tell Mr. Jones also that Mrs. Haines had only loaned these to you for the purpose of getting a loan for yourself?

A. No, I don't think I did. I told him—I told Mr. Jones that the bonds belonged to Mrs. Haines and I wanted to redeem them as quickly as possible.

Q. That was all that was said?

A. That is all I remember.

By Mr. Schimpf:

Q. Mr. Haines, you were asked a good many questions about your transactions in negotiable notes. Did you ever have a transaction with a bank before, where they kept both the collateral and the money?

A. I never did, no.

EVA B. HAINES, affirmed.

Direct examination.

By Mr. Schimpf:

Q. The four Traymore bonds and the bond of Great Britain and Ireland, in the sum of one thousand each, which have been testified to in this case, who owns those bonds?

A. I do.

Q. With whose money did you buy them?

A. With my own.

Q. Where did you get the money?

A. Inherited it from my mother.

Q. When did your mother die, Mrs. Haines?
A. She died either thirteen or fourteen.
Q. 1913 or fourteen?
A. Yes. I can't remember.
Q. This money with which you purchased these bonds was money which came from her estate to you?
A. Yes.
Q. Did you loan the bonds to Mr. Haines?
A. I did.
Q. For what purpose?
A. Well, I was away. When he called me up and asked me for them, I didn't ask him. He called me up on the phone and asked me if he could have them and I said yes. He went in my box and got them. I supposed for himself. I didn't know.

Cross-examination.

By Mr. Moore:

Q. Mrs. Haines, where are these two bonds now?
A. I have them in Philadelphia.
Q. Whereabouts?
A. In a box, a safe deposit box.
Q. Your own safe deposit box?
A. Yes.
Q. That is the one Great Britain and Ireland and the one Traymore bond that was replevined?
A. Yes.
Q. What bank are they in?
A. It is in the West End Trust Company, corner of Broad.
Q. Were you told by Mr. Schimpf that I had served notice on him to produce them here at the trial?
A. No, I knew nothing about that.

Q. Did not know anything about it?
A. No.
Q. Were you told by him that I had served a notice on him to produce your canceled checks, bank books, writings, papers or other documentary evidence that will show the purchase of these bonds on your part with your own money?

Mr. Schimpf: That is objected to, unless it is shown when that notice was served. It was served about five o'clock in the afternoon of the day before the trial. I told Mr. Moore I could not possibly reach Mrs. Haines at that time.

By the Court:

Q. Have you possession of the bonds?
A. I have.

The Court: Well, if there is any difficulty about the matter, I will hold the case open and let her produce the bonds.

The Witness: I think I can even show receipts for the bonds that I bought, both the Traymore bonds, and the Great Britain and Ireland bond.

By Mr. Moore:

Q. Have you any writing of any character in your possession that would show payment on your part for these bonds?
A. I think I have some receipts for them from Bioren and Company.
Q. Any checks showing payment?
A. I don't know, because when I left St. Charles' I tore up a lot of stuff to get rid of it.

Q. You haven't any checks?
A. I don't know. I should have to look.
Q. Whom did you pay for the bonds?
A. Bioren and Company. The check was made out to them.
Q. The check was made out to them?
A. Yes.
Q When was that?
A. I can't remember It has been several years ago

By the Court:

Q. Was it your own check?
A. Yes, my own check.
Q. What bank?
A. Well, I don't know whether it was the Equitable Trust or not.

By Mr. Moore:

Q. Did you every give your husband any other bonds to get a loan for himself on?
A. No.
Q. This is the only transaction?
A. Yes.

Mr. Moore: Witness is shown the check marked Exhibit P3 in this case and asked is that your check?

A. That is my signature, yes, sir.
Q. Did you know what this check was to be used for?
A. I didn't know exactly what it was to be used for. Yes, I did. To get these things back, to get these bonds back.

Q. The two bonds that were returned to you in March, or returned to Mr. Haines in March in respect to this transaction, was it your check which paid the $1600 then?

A. Yes.

Q. Where is that check?

A. Where is that check?

Q. Yes.

A. I don't know where it is.

Q. I can't hear you.

A. I know where the stub is.

Q. Where is the check?

A. I don't know where the check is.

Q. You don't know where it is?

A. No.

Q. Did you have any stock yourself in the Newlin Haines Company?

A. I have, yes.

Q. At the time that you gave these bonds to your husbands, as you say, did you have any knowledge that the company needed money?

Mr. Schimpf: That is objected to.

A. Not exactly, no.

Q. Didn't you know they needed money? Didn't you know that the account was overdrawn at the Equitable and that they had to make good two thousand dollars?

A. I did not. Positively did not.

Q. Hadn't you been loaning money to the company yourself around about that time—

A. No.

Q. —because they were short of funds.

A. That is the only one I loaned him.

Q. Is this the only collateral you ever put up for the company?

Mr. Schimpf: That is objected to. The testimony is she put it up for her husband or loaned it to her husband. That is not fair cross-examination. That is evidently a tricky question, the answer to which would not be binding on this witness. She could correct it.

The Court: I know what she said. She said she loaned her husband the money.

Q. Did you ever endorse any notes for the Newlin Haines Company?

A. Never.

Q. Have you a claim against the company now?

A. Yes.

Q. How much is it?

A. It is either ten or twelve thousand.

Q. What is it for?

A. Money I loaned the hotel company to build the stores on the Boardwalk.

Q. That is the only claim you have against the company?

A. I have some preferred stock.

Q. Well, I mean any claim for money loaned?

A. No.

Q. Well, were these stores built before this transaction with respect to this collateral loan, Mrs. Haines?

A. Yes.

Q. Did you know anything about the financial condition of the company at the time Mr. Haines got these bonds from you?

A. No.

By the Court:

Q. You remember when he got the bonds?

A. Oh, yes, but I couldn't tell the exact date.
Q. How many bonds did he get?
A. Five thousand. Five.
Q. Did you know what he was going to do with the bonds?
A. No.
Q. But you knew he was going to use the bonds?
A. I knew he was going to use them to borrow money.

By Mr. Moore:

Q. For what purpose?
A. I don't know. I didn't ask him.
Q. You don't know what the purpose was?
A. No.

By the Court:

Q. And you gave him the bonds to use without any limitation?
A. Yes. He told me he would soon get them back.

By Mr. Moore:

Q. Did you give him the five thousand dollars worth of bonds at one time or at different times?
A. Different times. I don't know exactly the time, but it is down here. You have it.
Q. How many times did you give him bonds?
A. I can't remember.
Q. More than once?
A. Yes.
Q. More than twice?
A. I can't remember that.

Q. And when?

A. Well, I don't know the dates.

Q. Where were the bonds just before you gave them to him?

A. In my box in my room.

Q. At the hotel?

A. Yes.

PLAINTIFF RESTS.

DEFENDANT'S TESTIMONY.

DAVID C. REED, sworn.

Direct examination.

By Mr. Moore:

Q. Mr. Reed, do you hold any official position in the Equitable Trust Company of Atlantic City?

A. Vice president.

Q. When was knowledge first communicated to you officially that these bonds in question in this suit were not the property of Newlin Haines, but belonged to his wife, Eva B. Haines?

A. When the last payment was made on the bonds, Mr. Haines demanded payment, or demanded surrender of the bonds at that time, and said they were the property of his wife.

Mr. Schimpf: Were you there? Did you hear the conversation?

A. Oh, no, not at all. I only know what was reported to me as an officer of the institution.

Mr. Schimpf: I object.

The Court: Strike it out.

Mr. Moore: I think I would have a right to show when officially as vice president any knowledge was communicated to him about these bonds, if you can recollect the date.

A. I can recollect that Mr. Jones reported to the Board of Directors— 10

Mr. Schimpf: I ask that all be stricken out, if the Court please.

The Court: You say you got knowledge at the time specified. I suppose what he is trying to testify to is this; that when Mr. Haines had the transaction with Miss Errickson, the matter then was taken up and it came to his knowledge. 20

Mr. Moore: Eventually it came to his knowledge.

The Court: I suppose that is about as far as he could go.

The Witness: As far as I could go.

By the Court:

Q. Did you talk with Mr. Haines about it?
A. No. 30

Mr. Schimpf: I ask his testimony be stricken out. It is entirely hearsay and irrelevant.

The Court: No, I cannot say that it is.

No cross-examination.

ANNA ERRICKSON, sworn.

Direct examination.

By Mr. Moore:

Q. What position, if any, do you hold in the Equitable Trust Company?

A. Note clerk.

Q. Do you keep this note ledger that has been admitted in evidence and marked Exhibit P1?

A. I do.

Q. What are your duties as note clerk?

A. I perform the clerical work in connection with the loans.

Q. Did you hear the testimony of Mr. Haines with respect to a conversation he claimed to have had with you at the time on July tenth, or about July tenth, when $1600 was paid on account of this note?

A. I did.

Q. Mr. Haines testified that on that occasion when he gave you this check for $1600 that he told you he wanted these bonds back, that they belonged to his wife, Mrs. Haines, and he desired to return them. Is that true?

A. No.

Q. Now, just tell what was said.

A. Well, Mr. Haines came in to make a payment on his note, and I told him to wait and see Mr. Jones, because I couldn't handle the matter, and Mr. Jones was out at the time and would be back shortly, but he couldn't wait or didn't care to, and he made the payment and left the other note and left the twenty-four hundred—

Q. How much was the note? Which time are you talking about?

Mr. Schimpf: Twenty-four hundred?

A. Well, he left the twenty-four hundred dollar note and also the eight hundred dollar note and the check, to have the matter taken up with Mr. Jones.

Q. Was anything at all said to you on that occasion concerning the ownership of the bonds?

A. No.

Q. Was anything said to you about the bonds being returned?

A. Well, he may have asked for the bonds back, but I would have no power in that matter at all. That was why the matter was referred to Mr. Jones.

Q. Do you know whether he asked you to return the bonds on that occasion?

A. I believe he did. That was the reason I referred him to Mr. Jones.

Q. Well, what was said about the bonds?

A. Well, he asked for the bonds, and I told him to wait and take the matter up with Mr. Jones because he was out at the time, and he said well, he would leave this other note and take it up with Mr. Jones over the phone so he wouldn't have to call at the bank the second time in case it was arranged agreeably. When Mr. Jones came in the matter was taken up. I took the matter up with him, and he said no, it couldn't be accepted, so we got Mr. Haines on the phone and told him that this eight hundred dollar note couldn't be accepted and the twenty-four hundred dollar note had to be protested. Then a day or two after that he came in and signed another note for twenty-four hundred dollars.

Q. How much was it?

A. Twenty-four hundred. That is this twenty-four hundred dollar note.

Q. Well, that is dated June tenth, 1918. Is that the note he signed in July?

A. No, that was signed June tenth.

Q. I thought you were testifying as to July tenth, 1918?

A. If I see the note maybe I can tell better what I am doing.

Mr. Moore: Witness is shown a note marked Exhibit P5, the twenty-four hundred dollar note, and is asked is that the note which was signed in July?

A. No; June tenth, 1918.

Q. Are you testifying as to what occurred on June tenth, 1918?

A. I may not have gotten your question right.

Q. I ask you what occurred at the time, on July tenth, 1918, when he came in and made this sixteen hundred dollar payment.

A. That was the time he asked for the bonds and I told him I couldn't deliver any bonds, and notwithstanding that he delivered the check to me, anyway.

Q. The check I understand he delivered and anything else did he deliver?

A. Why, he signed the new note for eight hundred dollars.

Q. Is this the note?

Mr. Moore: Witness being shown Exhibit P4, being a note for eight hundred dollars.

By the Court:

Q. What is the date of that?

A. July tenth, 1918.

Q. Is that a collateral note?

A. Yes, eight hundred dollars.
Q. What is the collateral?
A. One Hotel Traymore bond, one thousand dollars.
Q. Is that all?
A. That is all.

By Mr. Moore:

Q. Is that all that was left with you by Mr. Haines at that time?
A. Yes, and the check for $1600.
Q. That was all?
A. Yes.
Q. There was no note for twenty-four hundred dollars that he signed then, was there?
A. No. The note that was due was $2400.
Q. That was kept by you and this is the one that is marked paid here, and which is marked P5, is it?
A. Yes.

Mr. Moore: Witness is shown a collateral note for $800 dated July tenth, 1918, signed Newlin Haines, in which the collateral is set forth as protested collateral note for $2400, signed by Newlin Haines, endorsed Newlin Haines Company, collateral to said note being one one thousand Great Britain and Ireland bond, and two one thousand Hotel Traymore Company, said note was due and protested May tenth, 1918, and is asked when that note was received by the Equitable Trust Company.

A. A day or so after. About the eleventh or twelfth of July. You see, the $800 note dated July

tenth, 1918, reciting one bond of the Hotel Traymore Company, was refused. They wouldn't accept that, so then Mr. Haines signed a note for eight hundred dollars, dated July tenth, 1918, which recited the collateral as the protested collateral note for $2400, signed by Newlin Haines, endorsed Newlin Haines and Newlin Haines Company, the collateral to said note being one thousand Great Britain and Ireland and two thousand dollar Hotel Traymore bonds.

Q. When did he sign that?

A. He signed this a day or two after the other was due. That would be July eleventh or twelfth.

Q. Was any knowledge after July tenth, 1918, communicated to you by Mr. Haines, that these bonds were other than his own bonds?

A. He called at the bank about three or four days after this note was due, after July tenth, and went in the office and spoke to Mr. Jones, and then I was called in the office and Mr. Jones asked me what I had told Mr. Haines the day he came to renew this note.

Q. What was said?

A. I told him that Mr. Haines had asked for the bonds but I couldn't deliver them, so I had taken the sixteen hundred dollar check and the note for eight hundred dollars. Mr. Haines at that time said he told me they were Mrs. Haines' bonds, but he had not told me that.

Q. Was that the first time that you heard from anybody that they belonged to Mrs. Haines and not to Mr. Haines?

A. That was the first time.

Q. How long after July tenth was that?

A. That was about the twelfth or fourteenth, several days after July tenth.

Q. Was that the occasion when this new note was signed for this $800 which I just showed you here?

A. No, the new note was signed before that.

Q. The new note had been signed before?

A. That had been signed, yes, sir.

Q. And was in your possession?

A. Yes.

Q. That conversation, you say, was where, I mean where you first learned he claimed they were Mrs. Haines' bonds?

A. In Mr. Bacharach's office down at the bank.

Q. And you were called in there by whom?

A. By Mr. Jones.

Q. Who was present?

A. Mr. Haines and another gentleman.

Q. Did you know the other gentleman?

A. No, I don't know who he was.

Q. Who else?

A. That is all, Mr. Haines, another gentleman, Mr. Jones, and then I was called in.

Q. And that was, you say, how long after July tenth?

A. Well, I believe it was about three or four days after July tenth.

Q. But after you say you had received this—

A. It was after that.

Q. When you received this note, what was done, if anything, with the check that you had received for sixteen hundred dollars?

A. That had been sent through for collection, to see whether it would be good.

Q. When was that sent through?

A. That was sent through on July tenth.

Q. The same day you received it?

A. The same day we received it, yes.

Q. Was that sent through after or before the tele-

phone conversation with Mr. Haines which you referred to awhile ago?

A. After the telephone conversation.

Q. Who did the talking over the phone to Mr. Haines on that occasion?

A. I did.

Q. Well, what was said?

A. He left this note with me presumably as a renewal, to get the approval—

Q. Which note do you refer to, Miss Errickson?

A. I refer to this note.

Q. That is Exhibit P4, on which is marked in red ink, "canceled"?

A. Yes.

Q. For eight hundred dollars, which gives one bond of the Hotel Traymore Company of a thousand dollars?

A. Yes. He left this and a check for sixteen hundred dollars and I was to get in touch with Mr. Jones, so the matter, of course, was refused, and I called him up and told him so, and the note we held for twenty-four hundred dollars was protested. This note was canceled and returned to him. Then that night when our checks go out, the sixteen hundred dollar check went out with the checks to the other bank.

Q. And this was signed by Mr. Haines after that?

A. Yes.

Q. What did you tell Mr. Haines over the phone?

A. That his proposition wasn't accepted and we would have to protest the note.

Q. Were you told by any officer of the bank to communicate that to him?

A. Mr. Jones ordered me to do it.

Mr. Moore: I want to offer this note of eight hundred dollars in evidence.

(Paper marked Exhibit D6.)

Mr. Moore: I also offer at this time the protested collateral note of fifteen thousand dollars of the Newlin Haines Company, dated February nineteenth, 1918, payable four months after date, endorsed by Newlin Haines personally, date of protest June nineteenth, 1918.

(Paper marked Exhibit D7.)

Mr. Moore: I also offer the various writings which I examined Mr. Haines on this morning, with respect to this collateral, and which have already been marked for identification.

(Papers heretofore marked D1, D2, D3, D4, and D5 for identification, now marked Exhibits D1, D2, D3, D4 and D5.)

Mr. Moore: I also offer in evidence coupon bond number 545, Hotel Traymore Company, six percent first mortgage sinking fund gold bond, interest payable January first and July first, principal due January first, 1927, which is the bond that the Equitable Trust Company still holds in this transaction, and the only one.

Mr. Schimpf: Objected to because it has no relevancy to this case.

Mr. Moore: I want to introduce this bond as the basis for the stipulation, to show exactly what it was.

Mr. Schimpf: I withdraw my objection to it.

(Paper marked Exhibit D8.)

Mr. Schimpf: Of course, I do not stipulate that the Great Britain and Ireland bond follows that form.

Mr. Moore: You did stipulate it was a coupon bond of like character.

Mr. Schimpf: I stipulated everything in the world that could be stipulated about it.

The Court: Let us have no question about this matter. These were ordinary coupon bonds payable to bearer, were they not?

Mr. Schimpf: Mr. Jones so testified and I said that whatever Mr. Jones said about them was true. I do not know anything about them, but I agreed to take Mr. Jones word for it and that is what he said they were, and I said if he said so that is what they were.

Q. Miss Errickson, I show you the fifteen thousand dollar protested collateral note of the Newlin Haines Company which is in evidence and marked Exhibit D7, and ask you whether or not that note has been paid?

A. No, it hasn't been paid.

Q. It is still due and owing?

A. Still due and owing.

Q. With interest from what date?

A. With interest from June nineteenth, 1918.

Q. Do your books so show?

A. Yes.

Cross-examination.

By Mr. Schimpf:

Q. Where did you telephone to Mr. Haines on the tenth of July, 1918?

A. I believe it was the hotel company; at the St. Charles Hotel.

Q. And you reached Mr. Haines at the St. Charles Hotel on that day?

A. The day he left the note and the check with me.

Q. Well, that is July tenth, isn't it?

A. It was July tenth.

Q. And you say you reached Mr. Haines at the Hotel St. Charles on July tenth, 1918?

A. Yes.

Q. Don't you know that Mr. Haines wasn't at the Hotel St. Charles then?

A. I reached him. I presume he must have been there.

Q. You knew the hotel was in the hands of a receiver, did you not, from a period about the end of April?

A. I think it was—I don't know when they went into the hands of a receiver.

Q. Well, you think it was about that time, don't you?

A. Yes.

Q. Don't you know that Mr. Haines had been entirely displaced as manager before the fourth of July and wasn't at the hotel and had nothing to do with it, at that time?

A. Well, I got him on the phone. The only place I could think I got him was—

Q. Don't you know he didn't have anything to do

with the hotel at that time and wasn't living there and wasn't in any way connected with it on July tenth, 1918?

A. No, I don't know that.

Q. You don't know that at that time he was living in the City of Philadelphia and just came down here on that day to attend to that business, do you?

A. No.

Q. But if your testimony related to the tenth of March, when you telephoned him, you would easily have reached him at the St. Charles Hotel, because he was there then, wasn't he? Isn't that so?

A. I don't know when he changed his residence.

Q. Well, you know he was managing the hotel on the tenth of March.

By the Court:

Q. Who did the telephoning, you?

A. I telephoned.

Q. Are you sure where you telephoned to?

A. It is so long ago that would be hard to say, but I got him on the phone and told him that the proposition was refused.

Q. Well, was it at the Hotel St. Charles you telephoned him?

A. Well, you see, that I really couldn't swear to. I got him on the phone, but where I couldn't say. The only place I can presume it would have been, though, would be the St. Charles.

Q. And what did you tell him?

A. That the note he left with me wasn't accepted, and that the note we had that was due that day would have to be protested, and it was protested.

Q. You told him that?

A. Yes.

Q. Wherever you telephoned?
A. Yes.

By Mr. Schimpf:

Q. And so the note you were dealing with on that day was a protested note, was it?
A. It was protested that day.
Q. Show me the certificate of protest.
A. Well, I suppose they have the protested note there.

Mr. Moore: I haven't any such protested note.

Q. Isn't it because there never was such a note protested, a note that fell due on July tenth, 1918? Isn't that a fact, Miss Errickson?
A. No, I believe the note was protested.
Q. What would it have been protested for? Didn't you take sixteen hundred dollars of his money on that day?
A. We had taken sixteen hundred, but that wasn't payment in full for the note. The note was twenty-four hundred.
Q. But you had taken a new note for eight hundred besides?
A. Only conditionally. We hadn't accepted the note.
Q. And you returned the note for eight hundred dollars which you took conditionally, didn't you?
A. Yes.
Q. But you never returned the $1600 which you took conditionally, did you?
A. He came down and was willing to sign another note.
Q. Did you ever return the sixteen hundred dollars which you had taken conditionally?

A. No, we didn't take the sixteen hundred dollars conditionally. We took the eight hundred dollar note conditionally.

Q. Answer my questions and we will get along very much easier. According to your testimony you said to Mr. Haines, "I can't attend to this transaction, you will have to see Mr. Jones."

A. Yes.

Q. And he then left a sixteen hundred dollar check and an eight hundred dollar note with you to be referred to Mr. Jones, didn't he?

A. Yes.

Q. Well, weren't both papers accepted on the same condition, that they should be attended to by Mr. Jones?

A. The other note was protested.

Q. My question is plain; weren't both papers left with you upon the condition that they should be referred to Mr. Jones for attention?

A. Yes, they were referred.

Q. They were? Then why do you now say, "We took the note conditionally, but didn't take the check conditionally"?

A. Because he came in and signed another—

Q. I am talking about the tenth day of July, 1918, when these two papers were left with you. There was no other note signed on that day, was there?

A. You have another eight hundred dollar note with the citation in here that there was a protested note and the other bonds with it.

Q. I have, have I?

A. Yes.

Q. You will find that that note is for twenty-four hundred dollars, and not eight hundred dollars at all.

A. There is an eight hundred dollar note, Mr. Schimpf.

Q. There isn't, I beg your pardon.

A. There must be one, Mr. Schimpf.

Mr. Hanstein: This is not dated July tenth. This is dated June tenth.

Mr. Schimpf: I am quite aware of that. I am also under the belief that this conversation occurred on June tenth, and I am doing my best to fix it by this cross-examination.

Q. There is a note dated June tenth, 1918, which refers to a protested collateral note for twenty-four hundred dollars. I want to know when that collateral note was protested.

A. The collateral note that this recites was due and protested May tenth, 1918.

Q. How can you tell by it?

A. It tells here, "Said note was due and protested May tenth, 1918."

Q. What does that note say, the eight hundred dollar note dated July tenth, 1918?

A. It says "Protested collateral note for twenty-four hundred dollars signed by Newlin Haines, endorsed Newlin Haines, Newlin Haines Company, collateral to said note being one one thousand dollar Great Britain and Ireland bond, two one thousand dollar Traymore Hotel Company bonds, said note was due and protested May tenth, 1918."

Q. The same note due and protested May tenth, 1918, wasn't it?

A. Yes.

Q. And both of your notes refer to a note due and

protested May tenth, 1918, and there was no note protested on July tenth, was there?

A. You don't have a note that was due July tenth?

Q. I have a note that was signed July tenth.

A. Yes, but that isn't the one that was due. The one that was due July tenth would have been protested that day.

Q. And yet on July tenth, taking a new note for eight hundred dollars, you recite that the note that was given as collateral was a note that was protested May tenth and not July tenth?

A. Yes, because that is the prior note. That is the one we are holding.

Q. There is a note in June, 1918, which recites the same note protested May tenth?

A. Yes. We are holding that old protested note.

Q. Do you mean to tell this Court that on July tenth you would have written in a note—I presume that is your typewriting?

A. Yes.

Q. —that you would have written in a note which you dated July tenth, 1918, that a note was protested on May tenth, if in fact it had been protested on July tenth?

A. No, we still have that protested note that it recites there.

Q. All I am asking you is to produce some proof from your books or some certificate that any note was protested on July tenth.

A. Our books don't show the protest. The notary's books would show that.

Q. Have you got the notary's book here showing the protest of a note on July tenth, 1918?

Mr. Moore: We will get it and see what it says.

Q. Now, you say that this conversation with Mr.

Haines took place on the telephone with him at the St. Charles Hotel on the day that this note was protested, don't you, or, at least, you did say that?

A. Yes, on July tenth, the day that this note and the check was left with me.

Q. You also said it was on the day the twenty-four hundred dollar note was protested, didn't you?

A. Twenty-four hundred. Yes, I believe so.

Q. I show you the twenty-four hundred dollar note that fell due on July tenth. It is dated June tenth, 1918, for twenty-four hundred dollars, due one month, and marked at the bottom in red figures, which means due, July tenth. I show you the original note and ask you to show me where that note has ever been protested.

A. That hasn't been protested.

Q. That is the note of Newlin Haines for twenty-four hundred, which was due July tenth, isn't it?

A. Yes, this is the note.

Q. That is the note, and you now say that note wasn't protested, don't you?

A. No, that wasn't protested.

Q. Are you convinced now that no note was protested bearing his signature on July tenth?

A. Yes, there wasn't any note protested.

Q. And there is no question about your being convinced that there was no note protested on July tenth?

A. No.

Q. If the telephone conversation with Mr. Haines at the Hotel St. Charles occurred on the day that the note was protested, the twenty-four hundred dollar note, then it was not on July tenth, was it?

A. Well, the telephone conversation was held—

Q. Will you answer that question. If the telephone conversation, as you stated, was on the day

that the twenty-four hundred dollar note was protested, it was not on July tenth, 1918, was it?

A. Well, it was on the day the sixteen hundred dollar check was left.

Q. Now you want to correct your testimony that it was on the day the twenty-four hundred dollar note was protested?

A. Yes. It was on the day that this note and the sixteen hundred dollar check was left.

Q. And you now say it wasn't on the day that the note was protested?

A. Well, you have shown me that the note really wasn't protested.

Q. Well, you admitted twice that you were convinced it wasn't protested on that day. Are you in doubt about that again?

A. The July tenth note wasn't protested at all. From the appearance of the note it wasn't protested at all.

Q. I say to you are you now saying that the telephone conversation didn't occur on the day that the twenty-four hundred dollar note was protested?

A. No, it occurred the day this check for sixteen hundred dollars—

Q. Now—

The Court: Give her a chance to answer.

(Question repeated.)

A. No.

Q. Now then, when did the telephone conversation occur?

A. The day he left the sixteen hundred dollar check and this eight hundred dollar note.

Q. And that was on the tenth of July, 1918?

A. Yes.

Q. When did Mr. Haines, after he left this check and the eight hundred dollar note, see Mr. Jones?

A. I don't know.

Q. Well, you were there, weren't you, when he was talking to him?

A. The day he came in? I was there one day, yes, around about the—it was after July tenth. It might have been the fourteenth, twelfth or fourteenth. It was after July tenth, 1918.

Q. It was along about the twelfth or fourteenth? Will you turn to your note book of July tenth? What entry do you find there concerning this note on July tenth?

A. On July tenth, 1918, there is a payment of sixteen hundred dollars made on the twenty-four hundred dollar collateral note of Newlin Haines.

Q. And that is the day that you say you didn't tell Mr. Haines that he could have his bonds back, and the day that you told him also that you couldn't handle the transaction, he would have to see Mr. Jones?

A. Yes.

Q. And on that very same day, and without Mr. Haines having seen Mr. Jones, you charged up against him the sixteen hundred dollar check of his wife's?

A. Yes.

Q. And you held his eight hundred dollar note at the same time until the twelfth or fourteenth, when he did see Mr. Jones, and then returned him his eight hundred dollar note and kept his money?

A. We were secured by the twenty-four hundred dollar note.

Q. You returned his eight hundred dollar note and kept his money?

A. Yes.
Q. And you knew it was his wife's check, too?
A. No, I couldn't say that.
Q. You can read?
A. Yes.
Q. And this check was given to you?
A. Yes.
Q. And you made the entry?
A. Yes.
Q. And you passed the check through, and now I say didn't you know it was Mrs. Haines' check?
A. I didn't, because we accept anybody's check in payment of a note.
Q. When you did those things didn't you know it was Mrs. Haines' check?
A. No.
Q. You said in answer to Mr. Moore's early questions that it was on July tenth that Mr. Haines came in to renew a twenty-four hundred dollar note, and you told him that you couldn't handle that matter at that time, and that subsequently, two or three days afterwards, he came in and signed a new note for twenty-four hundred dollars. Now, is all that true?
A. On July tenth the note was eight hundred.
Q. Yes, I know what it was, but I am just telling you what I think you said in answer to Mr. Moore's question.
A. No, July tenth the note was eight hundred.
Q. I know what it was at that time, but that isn't my question.

(Former question repeated as follows: "You said in answer to Mr. Moore's early questions that it was on July tenth that Mr. Haines came in to renew a twenty-four hundred dollar note, and you told him

that you couldn't handle that matter at that time, and that subsequently, two or three days afterwards, he came in and signed a new note for twenty-four hundred dollars. Now is all that true?"

A. No, I hadn't my books nor the notes nor anything at that time, so I might have gotten twisted on the date.

Q. You think, then, that your answer concerning the twenty-four hundred dollar note wasn't right, that you were twisted when you gave that answer?

A. Yes, that was eight hundred.

Q. Now, do you remember that in that same connection you said that it was then that you first heard Mr. Haines say that these bonds belonged to his wife?

A. I didn't hear Mr. Haines say the bonds belonged to his wife until after July tenth, 1918.

Q. That is all right, but you were then saying it was on July tenth, that the twenty-four hundred dollars was under consideration, and you now say you were twisted, and I ask you now was it at the same conversation to which you were then testifying, you believed with accuracy, of course, but in which you were mistaken, was it in that same conversation you heard Mr. Haines say for the first time that these bonds belonged to his wife?

A. The note was eight hundred instead of twenty-four hundred, but it was July tenth, 1918, the first time.

Q. Was it at the same time you were then testifying to the conversation that you heard Mr. Haines say that for the first time?

A. I don't know what you are getting at, Mr. Schimpf. I can't understand you.

Q. In answer to Mr. Moore's early questions, you said that at the time Mr. Haines came in with this

sixteen hundred dollars and the eight hundred dollar note, that a twenty-four hundred dollar note due that day was protested, and that he came back a few days after and signed a new note for twenty-four hundred dollars. Now, you have said that when you used the figures, twenty-four hundred dollars, that you were twisted. I ask you whether it was at that same conversation that you have been testifying to that you heard Mr. Haines say for the first time that these bonds belonged to his wife?

A. If that was after July tenth, it was.

Q. You are very cautious. I congratulate you on it.

A. Well, I can't understand what you are saying any more than that. It was after July tenth, 1918, that Mr. Haines came in and said for the first time that they were Mrs. Haines' bonds.

Q. How do you fix the time as July tenth?

A. Because that was the last time the note was renewed, July tenth, 1918.

Q. How do you know it was at that conversation or some other conversation that you heard Mr. Haines say that?

A. Because I was so surprised to think they were her bonds. I had never known that. We don't do that; don't take one person's bonds for another person's note.

Q. Why not?

A. We don't do that.

Q. Don't you think it is commonly done by your bank and every other bank in the world?

A. No. She could have borrowed the money on her own bonds.

Q. Do you mean to say it isn't done by all banks and by your bank as well?

A. Not to my knowledge.

Q. How long have you been in the banking business?

A. About five or six years.

Q. Your experience has been entirely limited to one bank?

A. Yes.

Q. You don't know very much about the custom of loaning securities for the purpose of borrowing money on them, do you?

A. I thought I did.

Q. Well then, what is the custom? Did you ever have any more than one conversation with Mr. Haines in the presence of Mr. Jones?

A. No.

Q. So that whatever you were talking about, and however you might have been twisted, it was at that conversation that you learned that these bonds were Mrs. Haines'?

A. Yes.

Q. Who told you to put this check through the bank while the matter was still under consideration?

A. Well, I sent the check through to see whether it would be good. We couldn't do anything until we knew whether the check would be good.

Q. That is the only reason you deposited it, to find out if it was good?

A. Personally.

Q. What did you do with the eight hundred dollar note?

A. Now, let me get it straight. What eight hundred dollar is that?

Q. The one that was afterwards returned to Mr. Haines. It is marked canceled and offered in evidence and marked P4.

A. That was marked canceled and returned to him.

Q. When?

A. I can't say what date.

Q. What I want to know is what you did with it while it was in your hands. You had the check and the note. You deposited the check on the tenth of July. What did you do with the note?

A. That has been a year and a half ago. I can't remember what I did with it. I might have laid it in the drawer temporarily until the matter was adjusted.

Q. You haven't had any difficulty to remember anything else that occurred on that day, have you?

A. Well, as to where I just laid that particular note, that would be very strange to be able to remember such an insignificant thing.

Q. You remembered where you telephoned Mr. Haines and what you said to him.

A. That was an important matter. Just laying down a paper wouldn't be important enough to hardly make an impression on you.

Q. You took the matter up with Mr. Jones, didn't you, on that day?

A. Yes.

Q. What did you do with the note when you took it up with him?

A. I presume the whole transaction was pinned together and everything kept together.

Q. The whole transaction except the check, and that went to the credit of the Equitable Trust Company?

A. Yes.

Q. And then subsequently, when you refused the transaction, all Mr. Haines got back was his eight hundred dollar canceled note. That is a fact, isn't it?

A. He signed another eight hundred dollar note.

Q. All he got back was his eight hundred dollar canceled note?

A. That is all.

Q. He didn't get his money back?

A. No.

HARRY JONES, recalled.

Direct examination.

By Mr. Moore:

Q. Mr. Jones, you heard the testimony of Mr. Haines on the stand, did you not?

A. I did.

Q. Did you hear him testify to a conversation with you in March, relative to who was the owner of these coupon bonds that you had taken for this collateral loan?

A. I did.

Q. Did you have any conversation with Mr. Haines about who owned the bonds in March, 1918?

A. I did not.

Q. When did you first learn anything about these bonds being other than the bonds of Mr. Haines?

A. After we had refused to return the bonds to Mr. Haines.

Q. When was that?

A. That was a few days after July tenth, 1918.

Q. And where did that conversation take place?

A. It took place in the office of the Equitable Trust Company.

Q. Where abouts in the building?

A. Well, I can't say. It either was in the president's office or at my desk, which is just outside.

Q. Who were present?

A. I think just Mr. Haines, the first demand he made.

Q. Who else? Just yourself?

A. Just myself. On the first time he made a demand for the return of the collateral, I think he came alone.

Q. What was said?

A. Oh, I can't say certain about that. I do recollect him coming in with a stranger, a gentleman. I remember distinctly that was in the president's office he made demand for those bonds. That was within, I think, a week after July tenth.

Q. Well, what occurred? What was the conversation?

A. Well, he demanded delivery of the bonds, and I think that was the second time, because I observed that he had purposely brought a witness, whom, as I recollect, he didn't introduce to me, and he then said that he wanted the bonds returned because they were the property of his wife, as near as I can recollect.

By the Court:

Q. Was that the first time you heard that?

A. That was the first time. We never had any words until we refused the collateral first.

Q. You mean you never heard from him or anybody that the bonds belonged to Mrs. Haines?

A. No, I didn't know that.

By Mr. Moore:

Q. Would you have made the loans if you had known they belonged to Mrs. Haines and not to him, the bonds?

Mr. Schimpf: That is objected to. That is entirely irrelevant.

The Court: I do not see that that is important.

Q. Was anyone else called into the room at that time on the occasion of that visit?
A. Miss Errickson was called in.
Q. What was the occasion for calling her in?
A. Mr. Haines made the assertion that Miss Errickson told him he could have the collateral back at the time he paid the check. I think that was the controversy.

By the Court:

Q. What did she say in his presence then?
A. When she came into the room I put the question fairly to her. I says, "Miss Errickson, what did you tell Mr. Haines when he paid you the check about the return of the collateral?" She says, "I told him that he would have to see you, that I hadn't any"—
Q. Did she have any power to deliver any collateral?
A. No, she had no power.
Q. Did she ever do it?
A. She never did it.

By Mr. Moore:

Q. Did you hear Mr. Haines' testimony to the effect that it was unusual for a bank to keep collateral after a note had been paid which that collateral went with? Did you hear any such statement from Mr. Haines on the stand?
A. I do not recollect that.

Q. Well, he did so testify.

Mr. Schimpf: I beg your pardon. He did not so testify.

Mr. Moore: If you admit he did not so testify, I do not want to ask the question, if that is not in the record. Do you admit that is not in the record?

Mr. Schimpf: No admissions.

The Court: What is the question?

Q. Is it unusual to keep collateral after money has been paid on account of a collateral loan or all been paid?

Mr. Schimpf: Objected to as irrelevant.

The Court: I doubt the propriety of that evidence. The law must govern the situation. It is not what the custom is. It is what the law says may be done.

No cross-examination.

PLAINTIFF'S TESTIMONY IN REBUTTAL.

NEWLIN HAINES, recalled.

Direct examination.

By Mr. Schimpf:

Q. Did you have any telephone conversation with Miss Errickson on the tenth of July, 1918?
A. No.
Q. Were you at the St. Charles Hotel on that day?
A. No.
Q. Were you inside of the hotel on that day?
A. No.
Q. Were you in any way connected with the hotel at that time?
A. No.
Q. Where were you living?
A. Philadelphia.
Q. Did Miss Errickson reach you at all on the telephone that day?
A. No.
Q. Did you ever have any conversation with her such as she has testified to?
A. No.
Q. When did you first find out that the bank had declined to return this bond?
A. The next time I came down.
Q. At the time you came down to Atlantic City?
A. Yes.
Q. What did you go to the bank for then?
A. I went down to get the bonds.
Q. Was that when you found out you couldn't get them?
A. Yes.

Mr. Moore: There were one or two questions I forgot to ask Mr. Haines on my other cross-examination and I would like to ask them now.

Cross-examination.

By Mr. Moore:

Q. Mr. Haines, did you receive any notice of protest of this fifteen thousand dollar collateral note marked Exhibit D7 in evidence in this case?

A. I don't remember whether I did or not. I suppose I must.

Q. You think you did? The notice said they looked to you for payment of it?

A. If I received notice. An ordinary protest notice.

Q. You knew you were endorser on it and it had become due and it hadn't been paid, didn't you?

A. I knew I was endorser on it.

Q. You were in Atlantic City on the tenth of July, were you not?

A. Yes, sir.

Q. Weren't you at the St. Charles during that day?

A. I don't remember being there at all on that day.

Q. Weren't you employed by Mr. Grosscup after he was receiver?

A. Up to a certain time. Not after the first of July.

Q. Didn't you do anything for him or have any communications with the hotel after the first of July?

A. No.

Q. Didn't you go around there at all?

A. Except when the case was on I had to go down.

Q. You were here a good deal on the case, weren't you?

A. Every time the case came up I was.

Q. Didn't you go there to consult Mr. Grosscup about matters pertaining to the receivership and with others there?

A. Not at that time. It was out of my hands entirely.

Re-direct examination.

By Mr. Schimpf:

Q. You had done all those things previous to the first of July, hadn't you?

A. Before the first of July, yes.

PLAINTIFF RESTS.

TESTIMONY CLOSED.

FINDINGS OF FACT AND POSTEA.

(Filed June 3, 1919.)

ATLANTIC COUNTY CIRCUIT COURT.

EVA B. HAINES, *Plaintiff,* vs. EQUITABLE TRUST COMPANY, a corporation of New Jersey, *Defendants.*	In Replevin. Findings of Fact and Postea.

This cause was tried before Judge Howard Carrow, without a jury by the consent of both of the parties thereto, at the Atlantic Circuit, in the Real Estate and Law Building, Atlantic City, New Jersey, on April 4th, 1919.

After hearing the evidence and the counsel for plaintiff and for defendant, and after reading and considering the written briefs submitted by respective counsel on both sides, the Court finds as follows:

First—That the defendant is entitled to the possession of the two bonds in question, to wit: One Hotel Traymore Company $1000 six per cent first

mortgage gold bond, #543, principal due January 1, 1927, and a certain Great Britain and Ireland $1000 5½% convertible gold note, MM119826, principal due February 1, 1919.

Second—That the plaintiff return to the defendant said two bonds.

Third—That the defendant do recover against the plaintiff its costs and charges, duly taxed according to law.

Let a judgment be entered according to the foregoing findings.

HOWARD CARROW,
Judge.

JUDGMENT FOR DEFENDANT.

(Filed June 3, 1919.)

ATLANTIC COUNTY CIRCUIT COURT.

EVA B. HAINES,
Plaintiff,
vs.
EQUITABLE TRUST COMPANY, a corporation of New Jersey,
Defendants.

In Replevin. Judgment for Defendant.

This action was tried before Judge Howard Carrow, without a jury, at the Atlantic Circuit on April 4th, 1919. The Court, after having heard the evidence and arguments of the counsel on both sides and having considered the written briefs filed by counsel on both sides, finds as follows:

First—That the defendant is entitled to the possession of the two bonds in question, to wit: One Hotel Traymore Company $1000 six per cent first mortgage gold bond, #543, principal due January 1, 1927, and a certain Great Britain and Ireland, $1000 5½% convertible gold note, MM119826, principal due February 1, 1919.

Second—That the plaintiff return to the defendant said two bonds.

Third—That the defendant do recover against the plaintiff its costs and charges, duly taxed according to law.

Whereupon it is adjudged that the writ and complaint of the plaintiff be dismissed and that the defendant recover of the plaintiff the possession of said two bonds and that the plaintiff return to defendant said two bonds and the defendant recover of the plaintiff its costs, which are taxed at thirty-seven ($37.00) dollars.

Judgment entered June 3, 1919.

HOWARD CARROW,
Judge.

EXCEPTION.

ATLANTIC COUNTY CIRCUIT COURT.

EVA B. HAINES,
Plaintiff,
vs.
EQUITABLE TRUST COMPANY,
Defendant.

Exception.

The plaintiff, Eva B. Haines, hereby excepts to the findings of the Honorable Howard Carrow in this cause in favor of the defendant.

THEODORE W. SCHIMPF,
Attorney of Plaintiff.

Exception allowed:

HOWARD CARROW,
Judge.

EXHIBITS.

EXHIBIT 1.

Promissory note of Newlin Haines to Equitable Trust Co.

$4000. Atlantic City, N. J., January 10, 1918

Two months after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the

EQUITABLE TRUST COMPANY

at its Banking House in Atlantic City, N. J., Four Thousand DOLLARS in United States gold coin or its equivalent, having deposited with the said Company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz:

$4,000—6% First Mortgage Bonds Hotel Traymore Company

$1,000—Bond, Great Britain & Ireland

of a market value estimated by the undersigned at $.....; and the undersigned agree to deliver to the said Company additional securities to its satisfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon

the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company or its President or Treasurer, without either demand advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities and then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its op-

tion, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.

NEWLIN HAINES

(Endorsement on back of note is as follows)

In consideration of one dollar paid to the undersigned, and of the making at the request of the undersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to THE EQUITABLE TRUST COMPANY OF ATLANTIC CITY, N. J., its successors, endorsers or assigns, the punctual payment, at maturity, of the said loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further assent from the undersigned, who will remain bound upon this guarantee, notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof.

NEWLIN HAINES COMPANY
NEWLIN HAINES, *Pres.*

Exhibit P 1 is note book of defendant.

Exhibit P 2 is minute book of defendant.

Exhibit P 3.

No. 109 Philadelphia, 7/10 1918
THE COMMONWEALTH TITLE INSURANCE
& TRUST COMPANY 3-71
Chestnut and Twelfth Streets
Pay to the order of Equitable Trust Co.
Sixteen hundred and 00/100 Dollars
100
$1600 E. B. Haines.

Exhibit P4.
4/4/19M.

$800. Atlantic City, N. J., July 10, 1918
Two months after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the
EQUITABLE TRUST COMPANY
at its Banking House in Atlantic City, N. J.
..... Eight hundred .... .. Dollars
in United States gold coin or its equivalent, having deposited with the said Company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz:
1 Bond Hotel Traymore Co $1000.
of a market value estimated by the undersigned at $.....; and the undersigned agree to deliver to the said Company additional securities to its satisfaction, should the market value of the said secur-

ities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property of securities given unto or left in the possession of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company or its President or Treasurer, without either demand advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all

of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.
24061 Sept 10

NEWLIN HAINES
Canceled.

ENDORSEMENT ON BACK OF ABOVE NOTE.

In consideration of one dollar paid to the undersigned, and of the making at the request of the undersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to THE EQUITABLE TRUST COMPANY OF ATLANTIC CITY, N. J., its successors, endorsees or assigns, the punctual payment, at maturity, of the said loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further

assent from the undersigned, who will remain bound upon this guarantee, notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof.

NEWLIN HAINES
Canceled.

EXHIBIT P5

4/4/12m

$2400. Atlantic City, N. J., June 10, 1918

One month after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the

EQUITABLE TRUST COMPANY

at its Banking House in Atlantic City, N. J.,

.... Twenty four hundred .... DOLLARS

in United States gold coin or its equivalent, having deposited with the said Company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz:

Protested collateral note for $2400 signed by Newlin Haines, endorsed Newlin Haines, Newlin Haines Co —collateral to said note being 1—$1000 Bond, Great Britain & Ireland—2—$1000 Bonds Hotel Traymore Company, said note was due and protested May 10, 1918.

of a market value estimated by the undersigned at $.....; and the undersigned agree to deliver to the said Company additional securities to its sat-

isfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property of securities given unto or left in the possession of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company or its President or Treasurer, without either demand advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of

the sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.
23788 July 10

NEWLIN HAINES

[ENDORSED.]

In consideration of one dollar paid to the undersigned, and of the making at the request of the undersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to THE EQUITABLE TRUST COMPANY OF ATLANTIC CITY, N. J., its successors, endorsees or assigns, the punctual payment, at maturity, of the said loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further

assent from the undersigned, who will remain bound upon this guarantee, notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof.

NEWLIN HAINES

EXHIBIT FOR DEFENDANT D6

\$800. Atlantic City, N. J., July 10, 1918

Two months after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the

EQUITABLE TRUST COMPANY

at its Banking House in Atlantic, City, N. J.,

..... Eight hundred ..... DOLLARS

in United States gold coin or its equivalent, having deposited with the said Company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz:

Protested collateral note for \$2400 signed by Newlin Haines, endorsed Newlin Haines, Newlin Haines Co —collateral to said note being 1—\$1000 Great Britain & Ireland Bond—2—\$1000 Bonds Hotel Traymore Company, said note was due and protested May 10, 1918.

of a market value estimated by the undersigned at \$.....; and the undersigned agree to deliver to the said Company additional securities to its sat-

isfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company or its President or Treasurer, without either demand advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of the

sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.

NEWLIN HAINES.

ENDORSEMENT ON BACK OF ABOVE NOTE.

In consideration of one dollar paid to the undersigned, and of the making at the request of the undersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to THE EQUITABLE TRUST COMPANY OF ATLANTIC CITY, N. J., its successors, endorsees or assigns, the punctual payment, at maturity, of the said loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further assent from the undersigned,

who will remain bound upon this guarantee, notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof.

(Signed) NEWLIN HAINES

EXHIBIT FOR DEFENDANT D7

$15,000. Atlantic City, N. J., February 19, 1918

Four months after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the

EQUITABLE TRUST COMPANY

at its Banking House in Atlantic City, N. J.,

..... Fifteen Thousand ..... DOLLARS

in United States gold coin or its equivalent, having deposited with the said Company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz:

30,000 Newlin Haines Company, St Charles Hotel $1000 Mortgage six per cent Gold Bonds, principal payable December 31, 1922

of a market value estimated by the undersigned at $.....; and the undersigned agree to deliver to the said Company additional securities to its satisfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession of the said Company by the undersigned, and also upon any

balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company or its President or Treasurer, without either demand advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and re-

main liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.

NEWLIN HAINES CO.
NEWLIN HAINES, *Pres.*

23200 June 19

ENDORSEMENT ON BACK OF ABOVE NOTE.

In consideration of one dollar paid to the undersigned, and of the making at the request of the undersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to THE EQUITABLE TRUST COMPANY OF ATLANTIC CITY, N. J., its successors, endorsees or assigns, the punctual payment, at maturity, of the said loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further assent from the undersigned, who will remain bound upon this guarantee, notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof.

NEWLIN HAINES.

NEW JERSEY COURT OF ERRORS AND APPEALS

EVA B. HAINES, *Plaintiff-Appellant,* vs. EQUITABLE TRUST COMPANY, *Defendant-Respondent.*	On Appeal from the Atlantic Circuit Court.

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT.

STATEMENT OF CASE.

An action of replevin was commenced in the Atlantic Circuit to recover possession of two $1000 bonds of the Hotel Traymore Company and one $1000 bond of Great Britain and Ireland. Under the writ, the Sheriff took possession of the securities and delivered them to the plaintiff. Defendant resisted the plaintiff's action upon the claim that it was entitled to retain possession of the bonds as collateral security for the payment of a note of $15,000 made by Newlin Haines Company, upon which Newlin Haines was personally liable as endorser. The case was tried before the Honorable Howard Carrow, without a jury, who found that the defendant was entitled to the possession of the bonds and judgment was entered in favor of the defendant for the return of the same and costs (c. p. 101). To this finding and judgment an exception was allowed (c. p. 103).

GROUNDS OF APPEAL.

Several specific grounds of appeal are urged, all of which, however, are directed to the single proposition that the finding of fact and law by the trial Court was erroneous and the learned trial Judge should have found that the plaintiff was entitled to the possession of the bonds at the time the writ of replevin was issued and judgment ought to have been in her favor (c. p. 2).

ARGUMENT.

Facts.

The plaintiff, on and prior to December 14, 1917, was the owner of four bonds of the Traymore Company and one of the Government of Great Britain and Ireland, each of the denominaion of $1000 (c. p. 61).

She loaned these bonds to her husband, Newlin Haines, in order that the latter might pledge the same for a personal loan.

The husband obtained two loans of $2000 each from the defendant; one on December 14, 1917, and the other on January 10, 1918. These were subsequently consolidated into one note on January 10, 1918, of $4000 (c. p. 17 and 18). The five bonds belonging to his wife were deposited as collateral.

The obligation given to the defendant when the loans were consolidated was the usual form of collateral note and contained the following language:

"Having deposited with said company, as col-

"lateral security for the payment of this note, "or any note given in extension or renewal "thereof, as well as for the payment of any "other liability or liabilities of the undersigned "to the said company due or to become due, "whether now existing or hereafter arising, the "following property, viz: (describing the five "bonds above mentioned)." (Exhibit 1, c. p. 104, l. 14.)

The plaintiff did not receive any benefit whatever from the transaction, as the proceeds of the loans were used for the personal benefit of the husband. The consolidated $4000 note matured on or about March 11, 1918, at which time $1600 was paid on account thereof and two of the Traymore bonds were released and returned to the plaintiff (c. p. 37). To represent the balance of the loan, $2400, a new note was given, dated March 11, 1918, payable in thirty days, to secure which three bonds of the original collateral, to wit: two Traymore bonds and one Great Britain bond were retained. The note dated March 11, 1918, was a collateral note of the same form as the original. New notes in the same form were given from time to time, as renewals, until finally, on June 10, 1918, a new note was given by Newlin Haines for $2400 with the three bonds and a protested note for $2400, dated May 10, 1918, lodged as collateral. This renewal note was in the same collateral form. (Exhibit P5, c. p. 110.)

When the original $4000 note came due on March 11, 1918, and $1600 was paid on account and a renewal given for $2400, Haines informed the representative of the bank that the bonds belonged to his wife and that he was anxious to return them as soon as possible and asked for and received from the

cashier two of the Traymore bonds, leaving the three bonds, above mentioned, as collateral security for the debt of $2400 as renewed (c. p. 35, l. 33).

On July 10, 1918, the plaintiff drew a check to the order of the defendant for $1600 (Exhibit P3, c. p. 107) and her husband took the same to the defendant and left the check and a new note dated that day for $800, which recited one Traymore bond as collateral and requested that the other Traymore bond and the Great Britain bond be released. The defendant accepted the check for $800, with one bond mentioned as collateral, and collected the check. Subsequently, this note (c. p. 107) was cancelled and returned to the husband, who, without the knowledge or consent of his wife, made a new note dated July 10, 1918, for $800, reciting the same collateral as that contained in the note of June 10th (Exhibit D6, c. p. 113).

The witnesses were not in exact accord respecting the exact circumstances under which the plaintiff's check for $1600 and the renewal note for $800 were given by Haines to Miss Erickson, the note clerk of the plaintiff. The former testified that when he left the check and requested the surrender of the two bonds, the note clerk advised him that the bonds would be surrendered as soon as the check, which was not certified, was collected (c. p. 37, l. 30). Miss Erickson's recollection was that the question of collection of the check did not enter into the transaction. She said that she had no authority to surrender the bonds without referring the matter to the cashier, Mr. Jones. After the check had been deposited for collection, Mr. Jones decided to retain the three bonds and refused to accept the new note for $800, which recited one bond only as collateral security therefor.

Subsequently and before this suit was brought, a tender was made to the defendant on behalf of the

plaintiff of the $800, remaining due upon the original transaction, as then represented by Exhibit D6, c. p. 113, which was the note signed by the husband, without the knowledge or consent of the plaintiff and demand made for the return of all of the remaining collateral. Only $800 then remained due of the original loan of $4000. (See admission c. p. 23, l. 28).

The defendant refused to accept the money and surrender the bonds, setting up the claim that at that time the husband, Haines, was liable as an endorser upon a note dated February 19, 1918, for $15,000 made by the Newlin Haines Company, a hotel company managed by said Haines (Exhibit D7, c. p. 116). This note (Exhibit D7) was given in renewal of two other notes of the hotel company, one for $10,000, dated November 12, 1917, and the other for $5000 dated November 9, 1917 (c. p. 14). Both of these notes and Haines's liability as endorser existed prior to the time the bonds of the plaintiff were pledged as collateral by the husband for his debt as above detailed. There was no new consideration to support the note of $15,000, dated February 19, 1919. The same was given in renewal of obligations in existence prior to the time the loans were made to Haines upon the collateral of his wife.

No action was taken by the Board of Directors of the defendant authorizing the cashier to retain the securities of the plaintiff as collateral for the note of the hotel company, upon which her husband was endorser. Apparently that was done upon the sole responsibility of the cashier, after informal consultation with several directors.

The following is a chronological statement of the important facts to be borne in mind:

November 9th and 12th, 1917, defendant held the promissory notes of the Newlin Haines Company,

aggregating $15,000, upon which Newlin Haines was endorser.

December 14, 1917, Newlin Haines borrowed $2000 and deposited as collateral $3000 of the Traymore bonds owned by his wife and borrowed from her for that purpose.

January 10, 1918, Newlin Haines borrowed an additional $2000 and deposited two additional bonds belonging to his wife; the former transaction being consolidated in one note of $4000, with the five bonds as collateral.

February 19, 1918, existing loans to the Newlin Haines Company of $10,000 and $5000, respectively, consolidated in one note of $15,000, upon which Newlin Haines was endorser.

March 11, 1918, $1600 was paid on account of the $4000 note and two bonds released. Note of Haines for the balance of $2400 then given with the three remaining bonds as collateral. The defendant was then informed the bonds belonged to the plaintiff.

July 10, 1918, plaintiff paid $1600 on account of the $2400 note, upon the understanding that two of the pledged bonds were to be released, which money was retained by the bank, but the surrender of the bonds refused.

Subsequently and before suit was brought, $800, the balance of the original loan of $4000 was tendered to defendant and possession of the remaining bonds demanded. Defendant refused to accept the money and return the bonds.

The plaintiff's bonds were in the form of ordinary coupon bonds payable to bearer.

On July 10, 1918, when the plaintiff paid $1600 on account of the $2400 note, the representatives of the defendant then knew that the bonds were owned by the plaintiff and it was her check which was being

received on account of the loan. The defendant also knew that payment was being made by her upon the condition that two of the bonds were to be released.

Law.

FIRST.

The important question, therefore, is whether or not the defendant had the right to retain the remaining three bonds, belonging to the plaintiff, as security for the payment of the $15,000 note of the hotel company, upon which the husband is endorser. Manifestly, Haines had no authority whatever from his wife to pledge the bonds as security for the debt of the hotel company or his contingent liability thereon as endorser. The bonds were loaned by the plaintiff to her husband with the specific object of raising money for his own use, and, as her agent, his power was limited to the pledge of the bonds for that sole purpose. He had no power whatever to perform any act which would cause the bonds, as the property of his wife, to become security of the indebtedness of the hotel company or his liability as endorser.

Therefore, it must be conceded that Haines, in executing the collateral note which pledged his wife's bonds for the payment of the note of the hotel company, upon which he was endorser, acted entirely beyond any authority whatever.

The transaction between the defendant and Haines, with respect to the loans made to him, was within the scope of the latter's authority and in entire accord with the arrangement between him and his wife, and, undoubtedly, the defendant was entitled to retain the bonds until reimbursed for all the money actually

advanced at the time the same were pledged. Such right existed in the defendant, regardless of the true ownership in the bonds and would exist even if the husband fraudulently diverted the bonds from the uses contemplated by the arrangement between him and his wife. To that extent, the defendant was a *bona fide* holder for value, under the authority of the case of *Fifth Ward Bank vs. First National Bank,* 48 L. 513, and other decisions of like character.

We contend, however, the situation here is radically different for the reason that the husband, when he signed the collateral note, making the bonds of his wife subject to debt of the hotel company, exceeded his authority. The defendant did not have the right to retain such bonds against the wife as the true owner, unless it gave up something at the time of the transaction, which cannot or has not been returned to it and for which it cannot be made whole.

Therefore, when the original $4000, which was loaned at the time the wife's bonds were pledged, was repaid, of the equities existing as between the wife as the true owner of the bonds, which were thus disposed of without authority, and the defendant, those of the former should prevail.

The transaction between the hotel company and the defendant, respecting the $15,000 of notes, was not in any way influenced by or predicated upon the pledge of the bonds of the plaintiff or the possession of the same by the defendant as security for the loan of $4000 to Haines. The original loan of $15,000 on the note of the hotel company, for which the husband became an endorser, was made before the loan to the latter on the bonds of his wife. The defendant was not influenced in loaning the $15,000 to the hotel company by reason of the fact that it had in its posses-

sion bonds pledged by Haines which belonged to the plaintiff.

Therefore, the defendant was a *bona fide* holder for value of the bonds only to the extent of the moneys actually loaned thereon. No consideration whatever passed which would constitute the defendant a *bona fide* holder of the plaintiff's bonds so far as the note of $15,000 of the hotel company was concerned.

Obviously the situation was, when the defendant was repaid the $4000, precisely the same as if the defendant knew the bonds belonged to the plaintiff and had been loaned to her husband with express power to pledge the same exclusively for his debt and with no authority whatever to make them liable for the debt of the hotel company.

Under such conditions it cannot possibly be successfully contended that the defendant would be a *bona fide* holder without notice of the plaintiff's rights. Precisely the same situation exists when there is a failure of the consideration with respect to the defendant's claim that it parted with something of value, as a basis for its status of being a *bona fide* holder for value of the bonds as pledged for the hotel company's debt.

When the defendant was repaid, the money loaned to the husband upon the security of the wife's bond ought not to have any valid claim to the bonds as against the rightful owner, regardless of the form of the note given by the husband, when it is shown that the latter exceeded his authority in pledging the bonds for purposes not contemplated by his wife.

The liability to the defendant of the hotel company and Haines, as endorser, in December, 1917, and January, 1918, when the $4000 was loaned to Haines, with the bonds of his wife as collateral security,

would not constitute a valid consideration, to support the promise of Haines pledging such bonds for the payment of the hotel company's debt, in order to permit the defendant to retain the said bonds as against the owner thereof. The act of the husband was beyond the scope of his authority. The precedent debt of the hotel company to the defendant and the contingent liability of Haines, as endorser, would not constitute the bank a *bona fide* holder for value of the bonds if the pledge was in violation of the authority actually conferred by the plaintiff upon her husband.

Martin vs. Bowen, 51 Eq. 452;
Reeves vs. Evans, 34 Atl. 477;
Douredoure vs. Humbert, 85 Eq. 89.

When the defendant loaned Haines $4000 on the security of the bonds, it parted with something of value which constituted a valid consideration for the transaction, but that consideration has since been either repaid in full, or tendered, so that when this suit was brought, the defendant had been tendered payment of every dollar with which it parted when the bonds were received.

No new consideration came into existence with respect to the note given on February 19, 1918, by the hotel company to the defendant for $15,000, which was a consolidation of the two loans made the December previous. When this later note was taken, the defendant did not change its position in the slightest degree, except that it received additional collateral, not pledged when the original $15,000 notes were negotiated.

Upon the repayment of a $4000 loan, the defendant received every consideration with which it parted when the loan was made. The status has been re-

stored and there seems to be no equity in permitting the defendant to retain securities of the plaintiff, which were pledged by the form of collateral note used in violation of her instructions to her husband.

Haines was not the general agent of his wife to deal with the bonds in question. His authority over the same was limited to the specific authority to borrow money for his own use and not to pledge them for the debt of another.

Concisely stated, we urge a reversal upon this point, based upon the following fundamental principles to support which it seems needless to cite authorities:

1. The authority of Haines as the agent of his wife was limited solely to a pledge of the latter's collateral for his individual debt.

2. Haines exceeded his authority by the execution of the collateral note, making his wife's securities liable for the debt of the hotel company and his personal endorsement.

3. Therefore the defendant became the *bona fide* holder for value of the wife's collateral only to the extent of the moneys advanced thereon.

4. The financial relation between the defendant and the hotel company, by reason of the latter's note and Haines's endorsement thereon, was not in any way based upon or related to the loan to Haines upon his wife's securities.

5. When, therefore, the defendant is paid or tendered all of the moneys loaned by it upon the collateral of the plaintiff, the latter is entitled to have her securities.

SECOND.

Estoppel.

Aside from the right of the defendant to retain the bonds of the plaintiff, after having been repaid the money advanced when the loans were made, is the question of whether the defendant is estopped from retaining the bonds, in view of the fact that the $1600 was paid upon the condition that two of the bonds were to be released.

Upon this feature of the case, therefore, to wit, the defendant's conduct, it makes no substantial difference which line of conflicting testimony above referred to is accepted. According to Haines, the bank clerk agreed to surrender the bonds as soon as the check was collected, because it was not certified. According to the bank clerk, she told Mr. Haines that she could not surrender the bonds, but that the matter would have to be referred to Mr. Jones. But the agent of the defendant then knew of the plaintiff's ownership in the bonds. Regardless of which version is adopted, two important facts were established by both; one that the defendant knew the bonds were claimed to be owned by the plaintiff and that the money was paid upon the condition that two of them were to be surrendered to the plaintiff. Notwithstanding this situation, the bank collected the check of the plaintiff, retained the proceeds and refused to surrender the bonds to her.

In effect, the money was held in escrow until the cashier determined whether or not two of the bonds could be released. The refusal would seem to evince bad faith on the part of the defendant's officials.

When the original $1600 was paid in March, 1918, two of the bonds were surrendered by the bank to Haines. The latter had every reason to believe that the same course would be pursued when in July of the same year he made a similar payment and requested the release of two additional bonds. The plaintiff was extremely anxious to secure the possession of the bonds, and on July 1918, gave her own check for that amount, and then, if not before, the defendant knew that the bonds belonged to her. Instead of holding the check until Mr. Jones settled the matter, the check was passed to the credit of the defendant, money collected thereon and retained, and it was not until afterward that the defendant notified Haines that they would not accept the $800 with one bond as collateral, but intended to retain all the remaining bonds. The defendant, however, did not offer to return the plaintiff her money. By this conduct, the defendant not only has in its possession the three $1000 bonds, but retained $1600 of her money, which money was paid with the expressed condition that the bonds were to be surrendered. Manifestly, in these circumstances, the defendant should not have been permitted to retain at least two of the bonds and when she offered to pay the balance of the amount loaned originally, all three of them should have been returned to her.

We submit, therefore, that judgment should be reversed.

LEWIS STARR,
Of Counsel with Plaintiff.

New Jersey
Court of Errors and Appeals

Eva B. Haines,
Plaintiff-Appellant,

vs.

Equitable Trust Company,
Defendant-Respondent.

On Appeal from the Atlantic Circuit Court.

BRIEF ON BEHALF OF
DEFENDANT-RESPONDENT.

PRELIMINARY STATEMENT.

We agree with the brief of counsel for Plaintiff-Appellant that there is only one question to be decided in this case. It is whether the Defendant-Respondent, Equitable Trust Company, has a right to hold the two bonds in controversy as security for the personal endorsement of Newlin Haines, husband of plaintiff-appellant, upon the $15,000 collateral note of the Newlin Haines Company. The case was tried at the Atlantic Circuit before Hon. Howard Carrow without a jury and the Circuit Court entered a general finding in favor of the defendant-respondent pursuant to rules 113 and 114 of the Supreme Court as promulgated after the passage of the Practice Act of 1912 (c. p. 100-102). The two bonds in question in this suit were coupon bonds with no indicia of ownership on their face and that passed by delivery in the open market. They came

into the possession of defendant-respondent by virtue of a collateral personal note of the said Newlin Haines in which he pledged these bonds with other similar bonds, not only as security for the payment of that particular note of his, but "as well as for the payment of any other liability or liabilities of the undersigned (the undersigned being the said Newlin Haines) to the said Company (the Company being the defendant-respondent Equitable Trust Company) due or to become due, whether now existing or hereafter arising." The foregoing language, eliminating the parts in parentheses, is an exact quotation from the original note or notes and is contained in each note that was subsequently signed by said Haines in renewal of said original notes. See last renewal, being Exhibit D6 (c. p. 113). This language is contained in the printed form used by the defendant-respondent in all its collateral notes, and is similar to that used generally by banks and trust companies in New Jersey. On January 10, 1918, Newlin Haines repledged the two bonds in question, with three other similar bonds upon his personal collateral note of $4,000.00, which said collateral note contained the exact quotation above set forth (c. p. 104). On that date Newlin Haines was the personal endorser upon two ordinary promissory notes of the Newlin Haines Company in the total sum of $15,000. Some time between January 10, 1918, and February 19, 1918, these two notes of the Newlin Haines Company, a corporation of New Jersey, were called by the Trust Company. Newlin Haines was the President of said Newlin Haines Company. This Company owned at that time the St. Charles Hotel in Atlantic City. Newlin Haines made an arrangement with the defendant-respondent that instead of paying off the two notes of $15,000, the Trust Company was to accept a new note, collateral in form, and take as security for the same $30,000.00 worth of the Third mortgage bonds of the Newlin Haines Company. This arrangement was accepted by the Trust Company and the note was given, the said Newlin Haines, however, became a personal endorser on this collateral note. This note was marked Exhibit D7 and is found (c. p. 116). It was payable four months after its date; it was protested for non-payment on the date of its

maturity to wit: June 19, 1918, and is still unpaid. Some time in April or May of 1918 the Newlin Haines Company was adjudged bankrupt and Edward E. Grosscup was appointed Receiver or Trustee for same. The exact date when this Newlin Haines Company was declared bankrupt does not appear in the testimony, but it is inferable from the evidence as probably some time in the months of April or May, 1918. It was some time before July 1, 1918, because Mr. Haines says in his testimony that he was not being employed by Mr. Grosscup, the Receiver, after July 1, 1918.

ARGUMENT.

Facts.

All material facts that were in dispute were decided in favor of the Trust Company by the judgment rendered in its favor below. The mere fact that the case was tried before the court without a jury does not deprive the Trust Company in the case at bar of the benefit of this principle. It is well to get this point settled before the facts are considered in this argument because counsel on the other side, in their brief, have argued the matter as though some of the disputed facts which were decided in favor of the Trust Company were still to be considered as though they were decided in favor of Mrs. Haines. It was well settled under the practice in this state before the adoption of the Practice Act of 1912 that where a case was tried before the court without a jury a general verdict by the court decided all material facts in dispute in favor of the party securing the verdict. The Practice Act of 1912 made no material change in this practice. Supreme Court Rule 114 promulgated pursuant to the Practice Act of 1912 states as follows: "A general finding in favor of the plaintiff or defendant, respectively, is deemed to be a finding in his favor of all the material allegations put in issue." There was a general finding below in the case at bar in favor of the Trust Company. The Trust Company is therefore entitled to the benefit of this general finding in its favor on the facts. It is true that after the two decisions of Webster vs. the Freeholders 86 N. J. L. 256 (E. & A. 1914) and Standard vs. Pennsylvania 87 N. J. L.

712 (E. & A. 1915) that the Legislature amended Section 25 of the Practice Act of 1912. It is found in the Pamphlet of Laws of 1916, page 109. This court, in the Webster case and the Standard case, had decided that it was not permissable on appeal pursuant to the Practice Act of 1912 where the case had been tried below by the court without a jury to review on appeal any question of law unless some ruling in the court below had been adverse to the appellant and that the trial court had, through the instrumentality of a formal challenge of that ruling, an opportunity to reconsider and modify or change it. The Legislature, therefore, in 1916 to meet the situation raised by the Webster case added another sentence to Section 25, which said in effect that on the appeal provided for in this Section, where causes are submitted to the court to be heard without a jury, that errors made by the trial court in giving final judgment should be subject to reversal without the grounds of objection having been specifically submitted to the trial court. All that this amendment did was to permit appeals without specific grounds of objection having been submitted to the trial court where the trial court sat as both judge and jury. The material disputed facts in the case at bar can therefore be taken to have been decided in favor of the Trust Company.

We will now consider the facts pursuant to the judgment below in favor of the Trust Company. Counsel on the other side contended at the time of trial and contends in the brief in this court that this case turns upon the limited agency of Mr. Haines in using this collateral. Mr. and Mrs. Haines' testimony does not support this argument. Mr. Haines said on direct examination by Mr. Schimpf in the trial below (c. p. 31, l. 24) "Q. How did you have them in your possession? (meaning the bonds). A. I borrowed them from her to get a loan at the bank. Q. For yourself or for somebody else? A. For myself. Q. In accordance with your understanding with her, you pledged them for a loan of yours, did you not? A. Yes." Again Mr. Haines said on cross examination (c. p. 58, l. 27) "Did your wife know what you intended to do with the money from these loans from these bonds? A. No, she just

loaned it to me, is all. She loaned me the money. Q. She didn't know you intended to use it for the hotel company? A. Not that I know of." Then again Mr. Haines said on cross examination (c. p. 60, l. 1) "Q. When you took them (meaning the bonds) from her, (her meaning Eva Haines, Appellant) did you intend to use it for the Hotel Company (meaning the Newlin Haines Company), the loan? A. Yes." Mrs. Haines, in her testimony made it very emphatic that she gave the bonds to Mr. Haines without any limitation as to his authority in using them. In her direct examination in the trial below she was asked by Mr. Schimpf as follows (c. p. 62, l. 8) "Q. Did you loan the bonds to Mr. Haines? A. I did. Q. For what purpose? A. Well, I was away. When he called me up and asked me for them, I didn't ask him. He called me up on the phone and asked me if he could have them and I said yes. He went in my box and got them. I supposed for himself. I didn't know." Then again in the cross examination of Mrs. Haines she was asked (c. p. 67, l. 4) "Q. Did you know what he (Mr. Haines) was going to do with the bonds? A. No. Q. But you knew he was going to use the bonds? A. I knew he was going to use them to borrow money. By Mr. Moore: Q. For what purpose? A. I don't know. I didn't ask him. Q. You don't know what the purpose was? A. No. By the Court: Q. And you gave him the bonds to use without any limitations? A. Yes. He told me he would soon get them back." The argument of counsel on the other side, predicated upon the proposition of limited agency fails, therefore, because according to the testimony of both Mr. and Mrs. Haines the agency was not limited. Mrs. Haines, plaintiff-appellant, made this particularly emphatic in her testimony.

This case must be decided upon the plain terms of the written contract between Newlin Haines and the Trust Company. He signed a contract with the Trust Company in which he pledged the collateral in question as security for his personal endorsement upon the $15,000 worth of commercial paper of the Newlin Haines Company that was then in the possession of the Trust Company. As a consideration

for this provision of the contract and all of the provisions contained in that contract, the Trust Company gave Newlin Haines $4000 of its money. It is not true, therefore, to say that the Trust Company gave no consideration for its right to hold these two bonds in question for the liability of Newlin Haines to the Trust Company for his personal endorsement on the $15,000 collateral note of the Newlin Haines Company. The Trust Company loaned $4000 of its money upon the strength of the agreement of Haines in which, among other things, he pledged these $5000 worth of bonds as security for his personal endorsement on the $15,000 worth of commercial paper of the Newlin Haines Company.

At the time Mr. Haines first pledged the bonds in question in this suit he was liable to the Trust Company as endorser on two notes of the Newlin Haines Company aggregating $15,000. These two notes would come due in February, 1918. Now what is the exact language that is to be interpreted in the contract in the case at bar? This language has already been quoted heretofore in this brief. It will be found near the beginning of every collateral note printed as an Exhibit at the end of the State of the Case. It is not necessary to quote it again. Taking that language and applying it to the facts found in this case, what is the result reached? Certainly Mr. Haines' endorsement on the two notes of the Newlin Haines Company that were then in existence was a liability on his part to the Trust Company. It was a liability that would come due and require payment in February of 1918. If this provision of the contract, therefore, means what it says, the Trust Company acquired a right to hold the bonds in question for Mr. Haines' personal endorsement on the Newlin Haines Company's notes when it first parted with its $4000 to Mr. Haines. It is therefore idle to argue as counsel on the other side have done in their brief that the transaction between the Newlin Haines Company and the Trust Company with respect to the $15,000 loan to the Newlin Haines Company had nothing to do with and was not in any way influenced by the pledge of the bonds to the Trust Company under the $4000 personal loan to Newlin Haines. Undoubtedly the Trust Compa-

ny was influenced in loaning the $4000 to Haines by the fact that it would get some security in the shape of these bonds for Haines personal endorsement on the two notes of the Newlin Haines Company.

It is not true to say that Mrs. Haines received no benefit from this $4000 loan from the Trust Company to Newlin Haines. The Trust Company denies that it is necessary to show that Mrs. Haines received some benefit from this transaction in order that the Trust Company may hold these two bonds in question. The Trust Company never knew Mrs. Haines in this transaction and never had the slightest idea that the bonds belonged to her until several days after the $800 note marked D.6 and found (c. p. 113) had been delivered to the Trust Company by Mr. Haines. According to the evidence of the Trust Company, a day or two after this $800 note Marked D6 had been delivered in which the two bonds in question together with another bond had been repledged by Haines for the balance due on his original $4000 collateral note, Mr. Haines came to Mr. Jones, the Treasurer of the Trust Company and demanded the return of the two bonds in question, claiming that they belonged to his wife. According to the Trust Company's evidence this was the first time that anyone connected with the Trust Company had any knowledge that the bonds belonged to anyone other than Mr. Haines. They were coupon bonds, the title to which passes by delivery, and the Trust Company always thought that they belonged to Mr. Haines until he came to them several days after he signed the last renewal which the Trust Company now holds and laid the foundation for Mrs. Haines to bring this suit on the grounds that the bonds belonged to her. At the time of trial below, neither Mr. nor Mrs. Haines produced any documentary proof that these bonds were her personal property. Both, however, testified verbally to the effect that they were. Without in the slightest way admitting any necessity on the part of the Trust Company to show that Mrs. Haines derived any benefit from this $4000 loan to Mr. Haines, we call the attention of the court to several facts. Mrs. Haines testified that she was a stockholder in the Newlin Haines Company (c. p. 65, line 16—18). Mr. Haines

testified that the money he got on these bonds in question was loaned to the Newlin Haines Company (c. p. 56, line 4 et seq.). Mr. Haines was the president and a stockholder in the Newlin Haines Company. He owned the St. Charles Hotel before it was sold to the Newlin Haines Company (c. p. 44, line 2 et seq.). It is probable that the Newlin Haines Company was a close corporation largely controlled by Mr. and Mrs. Haines. At any rate, she was a stockholder in the Company and the Company got the benefit of the loan that was made on the bonds in question in this suit. She, therefore, did derive a benefit from the transaction. It is not incumbent upon the Trust Company to show that she derived a cent's worth of advantage from the use made of these bonds by the transaction in question. We merely set it forth in passing to correct some of the arguments made in the brief of counsel on the other side. The Trust Company never knew Mrs. Haines in this transaction from its inception to its end or until after Mr. Haines had delivered the present note of $800 marked Exhibit D6 when he undertook to lay the foundation for this suit.

As set forth in the preliminary statement, a short time before February 19, 1918, the Trust Company called the $15,000 worth of commercial paper of the Newlin Haines Company upon which Newlin Haines was a personal endorser. At this time the Trust Company had in its possession the $4000 collateral note of Newlin Haines in which the two bonds in question with three other bonds were pledged as collateral for the payment of any other liability of Newlin Haines whether then existing or thereafter arising. The Newlin Haines Company was the endorser on this $4000 collateral note (c. p. 104—106). This note was payable March 10, 1918. Now in this situation, on February 19, 1918, the Trust Company gave up its right to collect this $15,000 in the shape of the commercial paper which became due at that time and accepted a renewal in the shape of the $15,000 collateral note of the Newlin Haines Company (Exhibit D7 c. p. 116—118) relying among other things upon the personal endorsement of Newlin Haines upon this $15,000 renewal note marked Exhibit D7 and the further fact that the

said Newlin Haines had pledged the two coupon bonds in question in this suit as security for this personal endorsement of his. This was certainly a new consideration, moving from the Trust Company to Newlin Haines as the personal endorser on the old notes and the new collateral note for $15,000 marked Exhibit D7. The consideration was that the Trust Company gave up its right to collect these old notes of the Newlin Haines Company that were due at that time and upon which Newlin Haines was endorser. This detriment that the Trust Company suffered in foregoing its right to collect the notes is a good and valid consideration. Bills and notes, like other contracts, are not limited as to the kind or amount of consideration necessary, but any benefit, profit, or advantage to the promissor, or any loss, or detriment to the promissee is sufficient to support the promises contained in these instruments. This is so well settled in the law that it does not need the citation of authority to support it.

Is the Trust Company entitled to the possession of these two bonds? Did Mrs. Haines establish her right to hold them? She did not do so. She was not able to overcome the plain terms of the writing in question in this suit. Mr. and Mrs. Haines were not able to show at the time of trial that there was any fraud practised by the Trust Company or the slightest wrong-doing on its part when the bonds were given to it by Newlin Haines. Mr. Haines admitted that it would appear that they were his bonds up until the time he claims he notified the Trust Company to the contrary (c. p. 54, line 5 et seq.).

The principal issue in the trial below was whether or not Newlin Haines had notified the Trust Company when the original $4000 note of his came due on March 10, or 11, 1918, that the two bonds in question belonged to Mrs. Haines. Mr. Haines claimed that he did inform the Trust Company employees of this fact on March 11, 1918, when he paid $1600 on account of the $4000 note and renewed it for the balance. Mr. Jones, the Treasurer of the Trust Company and Miss Erickson, the note clerk, both stoutly denied this. See Mr. Jones' testimony beginning

(c. p. 93, line 10 et seq.). See also Miss Erickson's testimony beginning (c. p. 70 et seq.). The testimony of both Mr. Jones and Miss Erickson is to be read as a whole to get all of this, because as already stated it was the principal controversy or disputed fact in the case below. It seems that on July 10, 1918, Mr. Haines paid $1600 on account on this balance of $2400 that was due on his personal collateral note. He at the same time handed Miss Erickson a renewal note for $800 which was introduced in evidence by the plaintiff below as Exhibit P4 (c. p. 107). This P4 recited as collateral one bond of the Hotel Traymore Company, $1000. At the same time Mr. Haines asked if he could have two of the coupon bonds returned. Miss Erickson told Mr. Haines that she could not answer that, that he would have to see Mr. Jones. Mr. Jones was consulted and Mr. Jones had to consult the Board of Directors. The Board of Directors refused to return the collateral claiming their right to hold it as security according to the contract for the personal endorsement of Newlin Haines on the $15,000 collateral note of the Newlin Haines Company marked Exhibit D7 and which at that time had been protested and was unpaid. A day or two after this, Mr. Haines called at the Trust Company, he having at that time or previously thereto been informed that the Trust Company would not return the two bonds in question. He then and there received back from Miss Erickson the $800 note pledging the one coupon bond of the Traymore Company and which is marked Exhibit P4 and which note has written on it "cancelled" (c. p. 110) and at the same time executed and delivered to the Trust Company the $800 collateral note dated July 10, 1918, and repledged in this note which is marked (Exhibit D6 c. p. 113) the three coupon bonds, two of which are in question in this suit. Now, according to the testimony of both Mr. Jones and Miss Erickson, it was after this that Mr. Haines called at the Trust Company office with a witness demanding the return of the two bonds in question and then, for the first time, according to the Trust Company's evidence, claiming that the bonds belonged to Mrs. Haines. Now the trial court below very properly found a verdict in favor of the Trust Company on this evidence.

It was not reasonable to draw any other inference from the facts. There is not a bank in the United States that would take a renewal of this collateral note from Mr. Haines repledging these coupon bonds in question as security if he had indicated to the officers of the bank the fact that the bonds did not belong to him. The minute Mr. Haines had indicated such a fact to the officers of the Equitable Trust Company or to the officers of any other banking institution, the banking institution would have immediately "stood pat" and would never have permitted Haines to deal with them again in a renewal note transaction as though he were the owner of the bonds. Any other conclusion is ridiculous. Mr. Jones, the Treasurer of the Equitable Trust Company, testified that he had been in the employ of this Company since it started. He is a man of experience in matters of this kind and the minute that Haines had indicated to him such an important fact he would have immediately laid the matter before the Board of Directors and would have received instructions from the Board not to accept further renewals from Mr. Haines. A fact of this character is so vital and so important when a bank is dealing with coupon bonds, the title to which passes by delivery, that any other inference from the facts was impossible. Besides, the documentary proof supported the testimony of Miss Erickson and Mr. Jones, the Trust Company employees. It appears that the plaintiff below produced Exhibit P4 which was the cancelled $800 note wherein Mr. Haines undertook to have the Trust Company accept one Hotel Traymore Company coupon bond. Now bear in mind, the plaintiff Eva Haines produced this Exhibit in the trial below and bear in mind the further fact that this note was marked cancelled which shows it was never used and bear in mind the further fact that it was returned to Newlin Haines. The Trust Company, the defendant below, produced the $800 note which is Exhibit D6 and which is the note still in the possession of the Trust Company, unpaid and which repledged the three coupon bonds, two of which are in question in this suit. This documentary evidence shows that the Board of Directors of the Trust Company refused to accept Mr. Haines' offer to gives them a renewal for $800 with

only one coupon bond pledged as security. He received back into his own possession this note Exhibit P4 which was cancelled and refused and notwithstanding this refusal of the Trust Company and notwithstanding the fact that he had voluntarily paid $1600 on account of this note, he signed the present $800 note marked Exhibit D6 and repledged all three of the coupon bonds as security. He made no demand at that time for the return of his $1600 or the return of the two bonds in question. In the face of such evidence the trial court properly and justly found a verdict in favor of the Trust Company and as already strenuously urged in this brief, this verdict found all of these disputed facts as to when the Trust Company first received the knowledge that the bonds belonged to Mrs. Haines in favor of the Trust Company.

The reason that the Trust Company was willing to forego its right to hold the two bonds that were returned to Mr. Haines March 11, 1918, was because at that time the Newlin Haines Company was not in bankruptcy. On July 10, 1918, when Mr. Haines asked for the return of two more of the bonds Mr. Grosscup was in charge of the Newlin Haines Company and of the St. Charles Hotel as Receiver or Trustee. The $15,000 collateral note marked Exhibit D7 upon which Newlin Haines was a personal endorser had in the meantime become due and was then unpaid. No matter how sorry the Board of Directors of the Trust Company might personally feel for Mr. and Mrs. Haines because of the financial failure of the Newlin Haines Company, the Board of Directors had no right to return these two bonds to Mr. Haines on July 10, 1918. The duty of the Board of Directors of the Trust Company was to protect in every way possible the stockholders and depositors of the Trust Company from any possible loss that might arise by virtue of the financial failure of the Newlin Haines Company and the failure of the Company to pay the $15,000 note marked Exhibit D7 upon which Newlin Haines was a personal endorser. While it is true that the Trust Company had at that time $30,000 worth of the Third mortgage bonds of the Newlin Haines Company as collateral for this $15,000 note, this collateral was

likely to be wiped out by Mr. Grosscup in the course of the Receivership. It appears from the State of the Case that these bonds were under attack by the Receiver. Besides, Third mortgage bonds are very often worthless when the Company that gave them and the property they are a lien against are in bankruptcy. It may be that eventually the Trust Company will get all of this money due it under the $15,000 collateral note of the Newlin Haines Company. When that event occurs, if it does, the Trust Company will return the two bonds in question in this suit to Mr. Haines from whom it received them. Until it is determined whether the Trust Company will suffer a loss under the $15,000 collateral note of the Newlin Haines Company it is not only the legal right but the clear duty of the Board of Directors of the Trust Company to hold the two bonds in question in this suit.

LAW.

The law applicable to this case is not the law of agency nor the doctrine of estoppel, as opposing counsel urge. This case must be decided upon the plain terms of a written contract. It is all in writing. The Board of Directors of the Trust Company did not have to pass a motion and record it on the minutes appropriating the two bonds in question as security for Haines' personal endorsement on the $15,000 collateral note of the Newlin Haines Company. The Trust Company's right to hold the two bonds in question as security for Haines' personal endorsement arose when he first pledged the two bonds in the original collateral note. Either the language heretofore quoted from the note means what it says or it does not. If it means what it says, then the Trust Company's right to hold the bonds arose immediately upon the passing of the $4000 in money to Newlin Haines on his personal note. There are no strings to this language. It is absolutely clear. It says that the bonds are deposited as collateral security for the payment of the personal note, as well as for the payment of any other liability of Newlin Haines, due or to become due, etc. The Trust Company gave up $4,000 of its money for that particular provision in the con-

tract, as well as the other provisions of the contract. It is absolutely untrue, as counsel on the other side have argued, that the Trust Company gave no consideration for this particular provision of the contract. It gave up $4,000 for it. Then again, as already argued, while these two bonds in question were in the possession of the Trust Company, the Newlin Haines Company's commercial paper, upon which at that time Newlin Haines was a personal endorser, was called and the Trust Company gave up its right to collect the Newlin Haines Company's commercial paper, with Newlin Haines' personal endorsement, and on February 19, 1918, took the present $15,000 unpaid collateral note of the Newlin Haines Company, upon which Newlin Haines is still a personal endorser. The Trust Company gave consideration, therefore, for its right to hold these two bonds in question at the original inception when it received the bonds, and then again on February 19, 1918, when it surrendered its right to collect the fifteen thousand dollars worth of commercial paper with Newlin Haines' personal endorsement on it, which was then due. The right of the Trust Company to hold these two bonds in question continues up to the present hour and will continue until it is determined whether the Trust Company will suffer a loss on the $15,000 note of the Newlin Haines Company. It is not, therefore, correct to say, as opposing counsel have done, that no new consideration came into existence with respect to the $15,000 collateral note of the Newlin Haines Company again on February 15, 1918. The Trust Company, in its pleadings, does not set up that it is entitled to the possession of these bonds in question as owner of the same. It is only claiming the right to hold them pending the determination of whether or not it suffers a loss upon the $15,000 collateral note of the Newlin Haines Company, and upon which Newlin Haines is a personal endorser.

The ingenious argument in the brief of opposing counsel seems to be based on two fallacies. The first is a fallacy of fact. The second is a fallacy of law. The fallacy of fact upon which it is based is that there was no consideration emanating from the Trust Company for the provision in the contract

giving the Trust Company the right to hold these two bonds in question, as security for Haines' personal endorsement on the Newlin Haines Company's notes. It is a fact that Haines was an endorser on two notes of the Newlin Haines Company at the time he pledged the bonds in question. In the contract he then made with the Trust Company he agreed that if the Trust Company would loan him $4,000 the Trust Company could hold the two bonds in question as security for his personal endorsement on these notes, and the Trust Company passed over the $4,000 to him on the strength of his signing that contract. He signed it, and in the absence of fraud or some other legal ground, which was not shown in this case, the contract was a perfectly valid and good one, and it is too late now to single out that particular provision and say as to that part that relates to the two bonds in question being pledged for his liability on his personal endorsement on the two notes of the Newlin Haines Company, that the consideration does not apply and does apply to the balance of the contract. The $4,000 in money that passed from the Trust Company at that time applied to this particular provision in the contract that is in question in this suit, or it did not apply to any of the contract. The $4,000 passed to Haines as a consideration for the contract in its entirety, as written, and the right to hold the two bonds in question arose because the Trust Company gave Haines $4,000 for this particular provision, along with all other provisions in the contract. Then, as already argued heretofore in this brief, the right to hold the two bonds fastened again when the other consideration emanated from the Trust Company when it gave up its right to collect the notes that were then due from the Newlin Haines Company with Haines' personal endorsement, and accepted the present $15,000 unpaid collateral note of the Newlin Haines Company with Newlin Haines' personal endorsement.

The fallacy of law upon which the opposing counsel base their argument is that Mrs. Haines limited the agency of her husband when she loaned him the two bonds in question in this suit in order to get a loan for himself. It is argued that Mr. Haines ex-

ceeded his authority in the written contract when he pledged the two bonds in question as security for his personal endorsement upon the paper of the Newlin Haines Company. This fallacy of law is likewise based upon a fallacy of fact. It appears, as already argued heretofore in this brief, that it isn't a fact that Mrs. Haines limited the agency of her husband when she gave him the bonds in question. She said in her testimony that there was no limitation upon Mr. Haines' authority as to what he might be permitted to do with the bonds.

The doctrine of limited agency upon which counsel on the other side have premised the argument in their brief does not apply because the two bonds in question are coupon bonds with no indication of ownership on their face and the title to which passed in the open market by delivery. One of these bonds is still held by the Trust Company and was put in evidence in the trial below and marked Exhibit D8. It appears that the principal of said bond was due January 21, 1927. It further appears that the two bonds in question were similar in character to the one that was put in evidence (c. p. 77—78). The verdict of the trial court below settled the fact that these two bonds in question at the time this replevin suit was instituted were lawfully in the possession of the Trust Company as a *bona-fide* holder for value in due course. The limited agency theory does not apply to bonds of this character. Even though the bonds had been stolen by Mr. Haines from his wife, the Trust Company would have acquired a good title to same under the circumstances of this case. It does not make any difference what limitations, if any, Mrs. Haines put upon the use of these bonds when she gave them to Mr. Haines. They are not the kind and character of property that such a limitation could be placed upon. Coupon bonds of this character circulate in the open market the same as money or commercial paper. The *bona-fide* holder in due course gets an absolutely good title against the whole world regardless of any secret or latent equities. It would be impossible for the banks and trust companies of New Jersey to do business and handle coupon bonds of this character were the rule of law otherwise. It is an

absolutely just and fair rule of law. Trust companies and banks would never be safe in loaning their money on securities like that in question in this suit if the limited agency theory claimed by Mrs. Haines in the case at bar were declared to be the law in this state. It is well settled, however, that the law propounded by counsel on the other side in their brief is not the law of this state. Counsel on the other side argue in their brief as though this case were an equity proceeding. The plaintiff below instituted a replevin proceeding in a law court for the return of two bonds to which she claimed the legal title. This proceeding is wholly and entirely a proceeding at law in a law court and must be decided according to the well established principles of law for proceedings at law in the law courts of this state. Counsel on the other side, in their brief, refer to the case of Fifth Ward Savings Bank vs. First National Bank 48 N. J. L. 513 (E. & A. 1886) and try to escape from the effect of this decision. It is true that the coupon bonds in question in the Fifth Ward Savings Bank case were stolen bonds. Justice Depue in his opinion in this case said, speaking about the bonds:

> "They were negotiable securities, capable of being transferred by delivery, and the title of a *bona-fide* holder of such securities is valid, notwithstanding the person from whom he received them obtained possession of them from the real owner by fraud or felony."

Justice Depue further says in the same opinion, with respect to coupon bonds of this character, page 521 of the opinion as follows:

> "The theory of the law by which the negotiability of securities of this character is maintained is that, as in favor of a *bona-fide* holder for value, such securities are conclusively presumed to be the property of the person from whom they are obtained by delivery, and until the *bona-fide* character of the transfer is overcome the right of no other person in them will be recognized."

He further says on page 522 of this same opinion:

> "Only *mala-fides* in the taker of such securities

will operate to impeach his title. If the law were otherwise the purchaser of commercial paper who buys it from one who has obtained possession by fraud or felony would always hold it by a precarious title, no matter how cautiously and honestly he may have acted in making the purchase."

There are other parts of the opinion of Justice Depue in the Fifth Ward Savings Bank case that are pertinent to the case at bar. The pertinent facts in the Fifth Ward Savings Bank case are stated beginning at the first paragraph on page 518 just below the top of the page and continuing to the end of the last paragraph near the bottom of page 522. The remainder of the opinion from page 523 on deals with the authority of Boice, the Treasurer of the Savings Bank to negotiate a loan on the note of the Savings Bank direct with the First National Bank without any authority from the Board of Directors of the Savings Bank. That part of the opinion is not material to the principles in the case at bar. It appears from the facts in the Fifth Ward Savings Bank case that there was a general arrangement between the City Bank (the intermediary of the Savings Bank) and the First National Bank that all paper sent by the City Bank to the First National Bank should be held as security for monies loaned and to be advanced. The First National Bank held all of this negotiable paper and negotiable securities for collection and as security for all of the indebtedness of the City Bank. In this respect the facts are similar to those in the case at bar. The Trust Company is claiming the right to hold the two bonds in question for the liability of Newlin Haines on the other note of the Newlin Haines Company pursuant to the agreement Mr. Haines made with the Trust Company in his written contract. In the Fifth Ward Savings Bank case this court held that the First National Bank of Jersey City had a right to the possession of the coupon bonds and commercial paper in question in that suit in order to hold the same for all of the indebtedness of the City Bank, except of course, the note of the Savings Bank that was negotiated directly with the First National Bank.

The Trust Company in the case at bar is a holder in due course of the two bonds in question in this suit. This will partly appear from the evidence as to the bonds themselves (c. p. 77—78, also c. p. 50—51 and other places). The bond introduced in evidence and marked Exhibit D8 along with the other evidence satisfied all the definitions of a holder in due course according to Section 52 of the Negotiable Instruments Act of 1902. It was stipulated that the two bonds in question were like Exhibit D8. A holder in due course as defined by said Section 52, is as follows:

> A holder in due course is a holder who has taken the instrument under the following conditions:
>
> 1. That it is complete and regular upon its face (a);
>
> 2. That he became the holder (b), of it before it was overdue (c), and without notice that it had been previously dishonored, if such was the fact;
>
> 3. That he took it in good faith and for value (d);
>
> 4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it (e).

It further appears from the facts already stated and argued in this brief and from the evidence given at the trial that the Trust Company took the two bonds in question in good faith and for value without notice of any infirmity at the time of negotiation and before maturity, and that these bonds were regular upon their face. The Negotiable Instruments Act merely codified the law as it stood before the passage of that statute. There have been several decisions in this court since the passage of the Negotiable Instruments Act of 1902 which settled the proposition that coupon bonds like those in question in this suit are negotiable instruments. In Lembeck v. Jarvis, 70 N. J. Eq. 757 (E. & A. 1905), Justice

Reed, speaking for this court, said on page 760 of that opinion:

> "Negotiable bonds, like these in question, stand upon the same footing, as to transfer and as to the title of the holder, as commercial paper."

There are several decisions, however, in this court which deal more directly and authoritatively with this proposition. The leading case is, perhaps, Montvale v. People's Bank 74 N. J. L. 464 (E. & A. 1907). It was flatly ruled in this case that municipal coupon bonds similar to those in question in this suit were to be treated as though they were negotiable instruments so far as determining the rights of a holder in due course were concerned. The ruling in the Montvale case was again followed by this court in a later case, Linbarger v. Board of Education 83 N. J. L. 446 (E. & A. 1912). Chief Justice Gummere, speaking for this court on page 449 of the Linbarger case, said:

> "Municipal bonds payable to bearer are negotiable instruments, and the rights and liabilities of the makers and holders of such of them as have come into existence since the passage of our Negotiable Instruments Act..... are determined by the provisions of that Act."

Section 16 of the Negotiable Instruments Act provides among other things as follows:

> "But where the instrument is in the hands of a holder in due course, a valid title delivered thereof by all parties prior to him so as to make them liable to him is conclusively presumed."

The Trust Company being a holder in due course of the two bonds in question, its right to the possession of the bonds follows as a necessary application of the principles laid down in the Montvale and Linbarger cases just cited. It is, therefore, the settled law of this state that one who intrusts the physical possession of negotiable securities like the coupon bonds in question in this suit or commercial paper

to another for a specific purpose and the other uses the securities or the commercial paper for an entirely different purpose than that authorized a situation is created where a holder in due course of the securities is entitled to them as against the world. This principle applies even where the bonds were stolen. This principle, however, applies even as between husband and wife. When Mrs. Haines gave the bonds to her husband and permitted him to pass them out to the world as his bonds she ran the risk of having the law as it had been promulgated applied to these bonds. There is authority dealing with this exact situation between a husband and wife. Mechanics Bank v. Chardavoine 69 N. J. L. 256 (E. & A. 1903). In the Chardavoine case the wife endorsed the note and gave it to her husband to have it discounted for her benefit. The husband discounted it for himself and paid a debt of his own with it. It was held that the wife was liable to the bank. The very same ground was set up in the Chardavoine case that is raised by counsel on the other side in the case at bar, namely that the husband exceeded his authority. In answering this point, Chief Justice Gummere, speaking for this Court on page 258 of the opinion said:

> "An examination of the authorities, however, will disclose that this contention is untenable. The question to be determined in a case like the present is not what is the actual limit of authority conferred by the endorser of a blank note upon the person into whose hands she delivers it, but rather, what authority such an endorser, by her conduct, holds out that person as possessing, to one who takes the note in good faith, for value, and without notice that the actual authority conferred is a limited one only."

Further citation of authority is unnecessary. It will thus be seen that all of the argument in the brief of counsel of the other side, based upon the doctrine of limited agency, is contrary to the settled law of this state.

The counsel on the other side say, toward the end

of their brief, that "the financial relation between the defendant and the Hotel Company, by reason of the latter's note and Haines' endorsement thereon, was not in any way based upon or related to the loan to Haines upon his wife's securities." This is not correct for reasons heretofore argued in this brief and for the following reasons. Suppose the original $4000.00 personal collateral note of Mr. Haines, instead of containing the language quoted at the beginning of this brief, had said that the two bonds in question were deposited as collateral security for the personal endorsement of Newlin Haines on the then existing two promissory notes of the Newlin Haines Company in the total sum of $15,000.00. Would counsel on the other side then argue that the two bonds in question were not given as collateral security for Newlin Haines' personal endorsement on the Hotel Company's paper? Certainly, in that situation, the $4000.00 of the Trust Company's money would have passed to Newlin Haines for the right in the Trust Company to hold the bonds in question against his personal endorsement on the two notes of the Hotel Company. Now if that be so, and if the language under interpretation in the case at bar means the same thing, then the loan to Mr. Haines upon these securities was related, and most intimately, to Mr. Haines' personal endorsement on the Hotel Company's paper. The language as written in the original personal note of Newlin Haines, marked Exhibit 1, means in effect exactly what the illustration heretofore used states. The minute that Haines received the $4000.00 from the Trust Company and delivered to it the contract in question the right of the Trust Company to hold these bonds for Haines' personal endorsement on the paper of the Hotel Company, fastened upon the bonds in question. They then became pledged in the hands of the Trust Company for Haines' liability for his endorsement of this paper. The right of the Trust Company to hold them continues so long as Haines' endorsement remains upon this paper of the Hotel Company, even in the substituted form in which it now exists. Should this court decide, however, that the present $15,000.00 collateral note of the Newlin Haines Company, marked Exhibit D-7, was a new transaction, then the right of the Trust

Company arose again by a new consideration moving from it to Mr. Haines. Mr. Haines is an endorser on this present $15,000.00 unpaid collateral note and this paper was given in renewal of the two prior notes of $15,000.00 that were called. The Trust Company, therefore, forebore its right to call these two notes and accepted Newlin Haines as the personal endorser on the renewal. This was a "hereafter arising liability" of Newlin Haines under the terms of the $4000.00 collateral note of Mr. Haines marked Exhibit 1 that was then in its possession.

ESTOPPEL.

The doctrine of estoppel has absolutely no application to the case at bar. This argument is likewise based upon a fallacy. Counsel on the other side say in their brief that even disregarding the disputed testimony between Mr. Haines and Miss Erickson, the Note Clerk of the Trust Company, regarding the conversation at the time the $1600.00 was paid on July 10, 1918, on account of Mr. Haines' note, that two important facts were established by both, "one that the defendant knew the bonds were claimed to be owned by the plaintiff and that the money was paid upon the condition that two of them were to be surrendered to the plaintiff." We respectfully submit there isn't a line anywhere in Miss Erickson's testimony to support such facts. Miss Erickson insisted throughout all of her testimony that she never knew that Mrs. Haines claimed to own the bonds until after the present $800.00 note, marked Exhibit D-6, and which the Trust Company now holds pledging the two bonds in question, was executed and delivered by Mr. Haines to the Trust Company. Both she and Mr. Jones say in their testimony that it was after this present $800.00 note had been delivered that Mr. Haines came to the bank one day and claimed that he had told Miss Erickson to that effect at the time he had paid the $1600.00 on July 10, 1918. Miss Erickson stoutly denied this (c. p. 74, l. 23 and following). This was several days after July 10 when Mr. Haines was there evidently laying the foundation for this suit, because he had a witness with him at that time whom he did

not introduce (c. p. 94). The verdict of the trial court below, therefore, settled the fact that the Trust Company did not know the bonds were claimed to be owned by the plaintiff at the time the $1600.00 was paid.

The second statement of fact upon which this argument upon estoppel is based was likewise denied by Miss Erickson, the note clerk. Miss Erickson denied that the $1600.00 was paid upon condition that two bonds were to be surrendered to Mr. Haines (c. p. 81 and 82). The $1600.00 was not taken conditionally according to the Trust Company's evidence. If it was a material fact in issue it must have, therefore, been decided in favor of the Trust Company. Miss Erickson did not recall in her testimony whether the $1600.00 was paid by the check of Mr. Haines or Mrs. Haines. The check itself is signed E. B. Haines. This might be a man or woman. All that Miss Erickson remembered afterwards was that it was paid by a check which passed through the Trust Company. The Trust Company had no record of who was the maker of the check. As already argued heretofore, this question was definitely and finally decided in favor of the Trust Company in the trial below and properly so, because the documentary proofs supported the evidence of the Trust Company officers. There was absolutely no bad faith on the part of the Trust Company or its officers in refusing to return these two bonds in question. After its refusal had been communicated to Mr. Haines he came and signed the note for $800.00, marked Exhibit D-6, and repledged the two bonds in question with the other bond marked Exhibit D-8. Mr. Haines was an experienced business man with many years experience in dealing with note transactions at banks. This appears in his own testimony. He knew very well that if he wanted his $1600.00 back the time to get it back was before he delivered the $800.00 collateral note marked Exhibit D-6, which the Trust Company now holds. He did not have to deliver the $800.00 note the Trust Company now holds repledging these two bonds in question, if he did not want to do so. He knew the Board of Directors of the Trust Company had refused to return the two bonds in question when he re-

pledged them for this present $800.00 note. If he had paid the $1600.00 conditionally he would certainly never have signed this present $800.00 note the Trust Company now holds.

Miss Erickson was a mere note clerk in the employ of the Trust Company. She had no authority to decide what collateral security should be delivered under the circumstances presented in this case. A matter of such importance was for the determination of the Board of Directors. The Trust Company, its Board of Directors and its employees dealt throughout in good faith with Mr. Haines in this transaction. They would be recreant to their duty did they not assert their right to hold the two bonds in question for the reasons heretofore given.

It is respectfully submitted, therefore, that the judgment below should be affirmed.

Respectfully submitted,

CHARLES S. MOORE,

Attorney for and of Counsel with Defendant-Respondent.

ADDENDA.

In the brief of counsel on the other side there appears this argument:

> "When the defendant loaned Haines $4000 on the security of the bonds, it parted with something of value which constituted a valid consideration for the transaction but that consideration has since been either repaid in full, or tendered, so that when this suit was brought, the defendant had been tendered payment of every dollar with which it parted when the bonds were received."

The argument just quoted fails to distinguish be-

tween the right to the lien and the lien or pledge itself. The right to the lien arises by virtue of the written contract contained in Mr. Haines' personal $4000 note. This right of lien arose by two considerations that moved from the Trust Company to Mr. Haines as already argued heretofore. The repayment of every dollar of the $4000 originally loaned on Mr. Haines' personal note would not destroy the lien itself which the Trust Company has against the two bonds in question for the personal endorsement of Mr. Haines on the $15,000 note of the Company. The lien itself against the property, to wit: these two bonds, remains in the Trust Company so long as Mr. Haines liability on the $15,000 note of the Newlin Haines Company continues. Once the lien attached and became a valid lien it continues until this liability of Mr. Haines on the $15,000 note has been wiped out.

Respectfully submitted,

CHARLES S. MOORE,

Of Counsel with Defendant-Respondent.

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