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IN CHANCERY OF NEW JERSEY.

Between

THE CITY NATIONAL BANK OF HACK-
ENSACK, New Jersey, a National
Banking Corporation of the
United States of America,
Complainant,
and
ANTONETTA DiNAPOLI, (widow),
Defendant.

Notice of
Appeal.

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To Messrs. Hart & Vanderwart, Solr's of
Complainant:

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TAKE NOTICE that the defendant appeals from
the entire decree in this cause to the Court of Er-
rors and Appeals.

WRIGHT, VANDER BURGH & McCARTHY,
Solicitors for Defendant.

I hereby conceive there is a good cause for ap-
peal in this cause.

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LE ROY VANDER BURGH,
Of Counsel.

We hereby consent to the filing of the above
notice as of time.

HART & VANDERWART,
Solicitors for Complainant.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

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THE CITY NATIONAL BANK OF HACK-
ENSACK, New Jersey, a National
Banking Corporation of the
United States of America,
Complainant-Appellee,
and
ANTONETTA DiNAPOLI, (widow),
Defendant-Appellant.

On Appeal
from the
Court of
Chancery.
Petition of
Appeal.

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

The petition of Antonetta DiNapoli, widow, ap-
pellant in the above entitled cause, respectfully
shows that:

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1. Petitioner finds herself aggrieved by a final
decree made in the Court of Chancery by his
Honor, Edwin Robert Walker, Chancellor of the
State of New Jersey, bearing date the sixteenth
day of January, 1928, in a certain cause in said
Court of Chancery wherein said The City National
Bank of Hackensack, New Jersey, a National Bank-
ing Corporation of the United States of America
was Complainant, and Antonetta DiNapoli, widow,
was Defendant, in this respect, to wit: That the
said decree adjudges that the defendant's answer
to the bill of complaint be dismissed and that the
mortgaged premises be sold to raise and satisfy
the sums alleged to be due the complainant. And
petition-appeals from the decree of the Chancellor

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Petition of Appeal.

as aforesaid upon the ground that the same is erroneous in that the defendant received no benefit from the said mortgage to her personal estate, did not realize the nature of the transaction and, under the provisions of the Married Women's Act, she is not liable for giving security for the debts and obligations of her husband as her personal estate received no benefit. 10

2. Petitioner further prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

WRIGHT, VANDER BURGH & McCARTHY,
Solicitors of Defendant-Appellant. 20

LE ROY VANDER BURGH,
Of Counsel.

We hereby consent that the above Petition of Appeal be filed as of time.

HART & VANDERWART,
Solicitors of Complainant-Appellee. 30

IN CHANCERY OF NEW JERSEY.

10	Between THE CITY NATIONAL BANK OF HACK- ENSACK, New Jersey, a National Banking Corporation of the United States of America, Complainant, and ANTONETTA DiNAPOLI, (widow), Defendant.	} Memorandum- Opinion.
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On Bill to Foreclose.

Messrs. Hart and Vanderwart, for the complainant.

Messrs. Wright, Vander Burgh and McCarthy, for the defendant.

LEWIS, V. C.:

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This is a bill to foreclose a mortgage on property standing in the name of Antonetta DiNapoli, widow of Gaetano DiNapoli, which was executed by both of these parties some time prior to the death of the husband. The wife testified that her husband's money had gone into the property and not hers. Apparently the husband had it put in the wife's name, although he advanced the money necessary to obtain the property. All the money secured on the mortgage under foreclosure went to the account of DiNapoli and Son, the firm consisting of Gaetano DiNapoli, the defendant's husband, and their son James. The firm used the money in

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On Bill to Foreclose.

their business, with the exception of a certain amount which was used to pay off another mortgage on the property. The widow now contends that she received no benefit from the mortgage, and that she did not realize what the nature of the transaction was when she made it. She seeks to avoid the foreclosure on the ground that it comes within the protection of the "Married Women's Act," relieving her from liability for the debts or obligations of the husband, where her personal estate received no benefit.

10

The authorities seem to be clear, that a married woman may pay the debt of her husband, or mortgage her property for the purpose of cancelling his indebtedness; that is a completed executed transaction, and the wife is bound by it. It is different from where she merely undertakes to become a surety for the performance of an executory obligation. It would seem, therefore, that the present defendant has no valid defence to the foreclosure of the mortgage. The defence does not show that any actual fraud was practiced upon her, or coercion, at the time of the making of the mortgage. The official who took her acknowledgment, and another witness, testified very clearly that the whole transaction was explained to her at the time her acknowledgment was taken (which was separate and apart from her husband), and that she thoroughly understood the situation at the time.

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The foreclosure should, therefore, be granted, and I will advise a decree accordingly.

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On Bill, &c., Final Decree.

SECOND: That the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant, that is to say, the sum of \$5,500 together with lawful interest upon \$3,000 of said amount from April 2, 1925, and upon \$2,500 of said amount from April 16, 1925, a total of \$6,242.50, with costs to be taxed, and that a writ of *feri facias* do issue for that purpose out of this Court directed to the Sheriff of the County of Bergen, commanding him to make sale according to law of the said mortgaged premises, and out of the money arising from such sale to pay to the complainant, or to his solicitor said debt, interest and costs; and in case more money should be raised by the said sale than shall be sufficient to insure such payment, that such surplus be brought into this Court to abide the further order of the Court unless otherwise previously disposed of by the order of this Court; and that said Sheriff make return, without delay, of his proceedings by virtue of said writ; and it is further ORDERED, ADJUDGED and DECREED that the sum of \$200 be allowed to counsel of complainant instead of the retaining fee now allowed by statute and that the same be included in the taxed bill of costs and collected with the other items of said bill.

E. R. WALKER,
Chancellor.

Respectfully advised,
VIVIAN M. LEWIS,
V. C.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

10

THE CITY NATIONAL BANK OF HACK-
ENSACK, New Jersey, a National
Banking Corporation of the
United States of America,
Complainant-Appellee,

and

ANTONETTA DINAPOLI, (widow),
Defendant-Appellant.

Notice of
Argument.

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To Messrs. Hart & Vanderwart, Solr's of
Complainant-Appellee:

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TAKE NOTICE that the above entitled cause
will be argued before the New Jersey Court of Er-
rors and Appeals on October 16th, 1928 at eleven
o'clock in the forenoon or as soon thereafter as
counsel can be heard, at the State House in the City
of Trenton.

WRIGHT, VANDER BURGH & McCARTHY,
Solicitors of Defendant-Appellant.

We hereby consent to the filing of the above
notice as of time.

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HART & VANDERWART,
Solicitors of Complainant-Appellee.

Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey.

The Complainant, The City National Bank of Hackensack, New Jersey, a national banking corporation of the United States of America, respectfully shows that:

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1. On September 10, 1924, Gaetano Di Napoli and Antonetta Di Napoli, his wife, being indebted to The City National Bank of Hackensack, New Jersey, in the sum of \$6000, executed to Charles Rosenberg, Trustee for The City National Bank of Hackensack, New Jersey, a bond of that date to secure that sum, payable on December 10, 1924, with interest at the rate of six per cent. (6%) per annum, payable on December 10, 1924.

20

2. To secure payment of the bond, said Gaetano Di Napoli and Antonetta Di Napoli, his wife, executed to said Charles Rosenberg, Trustee for The City National Bank of Hackensack, New Jersey, a mortgage of even date with the bond; and thereby conveyed to the said Trustee in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage, having been first duly acknowledged, was recorded in the Clerk's office of Bergen County in Book 700 of Mortgages, page 314, &c.

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3. The mortgaged premises are described as follows:

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ALL that tract or parcel of land and premises, hereinafter particularly described, situ-

Bill of Complaint.

ate, lying and being in the City of Hackensack, in the County of Bergen and State of New Jersey, and which on a certain map entitled, "Map of Property of Matthew Andronico, Hackensack, N. J.," filed in the Bergen County Clerk's office on Oct. 16, 1908, as Map No. 1167, are known and designated thereon as lots numbers (2) and (3) in block number (1), excepting and reserving out of the same all that lot, tract or parcel of land and premises heretofore conveyed by the said Gaetano Di Napoli and wife to Fedele Toriello by deed bearing date the 26th day of Oct. 1931, and recorded in the Bergen County Clerk's office in Book 865 of Deeds, page 364, beginning at a point in the northwesterly corner of lands of the said party of the first part (Gaetano Di Napoli) which point is also the southwesterly corner of lands of the party of the second part (Fedele Toriello), which is distant southerly from the southerly side of Broadway 143.54 feet; thence running (1) easterly and along the lands of the said party of the second part, fifty feet, more or less, to the southeasterly corner of lands of the said party of the second part, which is also the northeasterly corner of the lands of the said party of the first part; thence (2) southerly and along the division line between lots numbers 1 and 2 as laid out on a map entitled, "Map of Property of Matthew Andronico, Hackensack, N. J.," 15.45 feet to a point; thence (3) westerly 50 feet to a point in the easterly line of lands of the Board of Education of the Township of New Barbadoes; thence (4) northerly and along said lands of the Board of Education 14.81 feet to the point or place of beginning.

Bill of Complaint.

4. At the time of the execution of the mortgage there were two prior mortgages upon the premises in question, one held by the Hackensack Trust Company, in the sum of \$5000, and the other by Noe Parciasepe, in the sum of \$1500, and the mortgage to Charles Rosenberg, Trustee for The City National Bank of Hackensack, New Jersey, was given subject to the lien of the two aforesaid mortgages.

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5. On February 11, 1925, Gaetano Di Napoli, husband of Antonetta Di Napoli, and one of the makers of the mortgage hereinbefore mentioned to complainant, departed this life intestate. At the time of his death said Gaetano Di Napoli was possessed of a right of curtesy in the premises which are the subject of this suit, the fee simple title being in the name of Antonetta Di Napoli. The said Antonetta Di Napoli is now a widow.

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6. On December 10, 1924, the maturity date described in the mortgage which is the subject of this suit, the said sum of \$6000 was not paid, either to Charles Rosenberg, Trustee for The City National Bank of Hackensack, New Jersey, or to the *cestui que* trust, The City National Bank of Hackensack, New Jersey, but there has been paid on account of the sum of \$6000 the sum of \$500, leaving a balance due upon the principal amount named in the mortgage above described of \$5500, together with interest upon the said balance of \$5500.

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7. When the principal sum of \$6000 on December 10, 1924, was not paid in accordance with the terms of the mortgage, and after efforts had been made by both the trustee and this complainant, the *cestui que* trust, to collect the said sum from

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Bill of Complaint.

10 these defendants, Charles Rosenberg, Trustee, on March 6, 1925, assigned the mortgage herein described to complainant, which said assignment was acknowledged on March 6, 1925, and on August 26, 1925, was recorded in the office of the Clerk of Bergen County in Book of Assignments on pages , &c.

8. Prior to the assignment above mentioned, and on November 12, 1924, the sum of \$500 was paid on account of the principal sum.

20 9. The said Antonetta Di Napoli and Gaetano Di Napoli during his lifetime have always been in possession of the premises from the date of the mortgage.

10. Of the principal sum \$5500 is due and unpaid, and interest is unpaid upon complainant's bond and mortgage as follows: Upon \$3000 from April 2, 1925—Upon \$2500 from April 16, 1925.

Complainant is without adequate remedy in the courts of law and therefore prays—

30 1. That Antonetta Di Napoli (widow), who is the defendant to this suit, may answer this bill of complaint without oath and each statement therein made:

2. That an account may be taken of the amount due on complainant's mortgage:

40 3. That the defendant may be decreed to pay complainant the amount so found due, with interest and costs, by a short day, to be appointed by this Court; and that in default of such payments she be debarred and foreclosed of all equity of redemption in said lands: or

Answer to Bill of Complaint.

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on its mortgage, with interest and costs:

5. That a writ of subpoena may issue, commanding said defendant to answer this bill of complaint and to abide by such decree as this court may make in the premises.

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HART & VANDERWART,
Solicitors and of Counsel with Complainant.

Answer to Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

20

Between

THE CITY NATIONAL BANK OF HACK-
ENSACK, NEW JERSEY, a national
banking corporation of the
United States of America,
Complainant.

On Bill to
Foreclose
Answer.

and

ANTONETTA DI NAPOLI (widow),
Defendant.

30

The answer of the defendant, Antonetta Di Napoli.

This defendant, Antonetta Di Napoli, answering the Bill of Complaint says that:

1. She denies the first paragraph, except that part thereof which alleges that she executed with her husband, Gaetano Di Napoli, in favor of Charles Rosenberg, Trustee for the City National Bank of Hackensack, N. J., some papers which

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Answer to Bill of Complaint.

were represented to her as being a security on her property for moneys loaned or to be loaned to her husband by complainant, but she has no knowledge of the amount or terms of same.

10 2. She admits having executed a mortgage, but she has no information sufficient to form a belief as to whether same was the one referred to in the second paragraph, but if it was such, she denies that the same was executed for the purpose of securing payment of any bond therein referred to or for the payment of any money or moneys for which this defendant was indebted to the said City National Bank of Hackensack, N. J.

20 3. She admits the third, fourth and fifth paragraphs.

4. She has no knowledge or information sufficient to form a belief as to the allegations in the sixth, seventh and eighth paragraphs.

5. She admits the ninth paragraph.

6. She denies the tenth paragraph.

30 7. The bond and mortgage set forth in complainant's said bill of complaint and sought thereby to be foreclosed were executed by this defendant under the coercion of her said husband and on the misrepresentation of said complainant and its representatives, that her signature was required merely as a formality to show that some one else was guaranteeing the payment of the money or moneys that her said husband, Gaetano Di Napoli, had already borrowed or would in the future borrow from the said City National Bank on promissory note or notes executed by himself; that the
40 said City National Bank of Hackensack, as well as

Answer to Bill of Complaint.

the said Charles Rosenberg, Trustee for said Bank, well knew at the time of the signing of said bond and mortgage by this defendant, that that was the purpose for which this defendant executed the same; that no moneys were ever advanced to her or to her separate estate by said complainant or said Charles Rosenberg either individually or as such Trustee, nor was any benefit derived by this defendant or by her separate estate through the execution of said bond and mortgage; that she never executed any promissory note or notes for any loans made to her said husband nor did she ever pay any money on account of either the principal or interest of said loan or loans so made to her said husband, as aforesaid; that she has no knowledge of any payment having been made on November 12, 1924, in the sum of \$500.00 nor has she any knowledge or reason to believe that there is interest due on \$3000.00 from April 2, 1925, and on \$2500.00 from April 16, 1925, when as a matter of fact she has never paid for any interest at any time; she believes, however, that the dates of April 2 and April 16, 1925, are the due dates of promissory notes executed by her said husband during his lifetime for moneys loaned to him by the said complainant or by Charles Rosenberg, its Trustee; that said complainant through Charles Rosenberg, its trustee, and representative, represented to this defendant at the time she executed said bond and mortgage that the same were required merely as a formality so that the Bank could show that it had some collateral security for the making of the loans to her said husband; that said complainant and trustee well knew that her said husband was in the general contracting business and that this defendant was not at any time ever connected in business with him.

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Reply to Answer of Bill of Complaint.

This defendant, therefore, prays that the said City National Bank, complainant, may be ordered to deliver up said bond and mortgage that the same may be declared null and void and ordered cancelled of record.

10

WILLIAM DE LORENZO,
Solicitor of Defendant.

Reply to Answer of Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

Between

20

THE CITY NATIONAL BANK OF HACK-
ENSACK, NEW JERSEY, a national
banking corporation of the
United States of America,

Complainant,

and

ANTONETTA DI NAPOLI (widow),
Defendant.

On Bill to
Foreclose
Reply.

30

The reply of the complainant herein to the answer of the defendant, Antonetta Di Napoli, says that:

1. Complainant denies all the allegations contained in the answer of the defendant, excepting that it is admitted that this defendant did not execute any promissory note or notes for loans made to her or to her husband, but he reaffirms the facts set forth in the complaint filed herein.

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HART & VANDERWART,
Solicitor of Complainant.

Order of Reference.

IN CHANCERY OF NEW JERSEY.

<p>Between</p> <p>THE CITY NATIONAL BANK OF HACK- ENSACK, NEW JERSEY, a national banking corporation of the United States of America, Complainant,</p> <p style="text-align: center;">and</p> <p>ANTONETTA DI NAPOLI (widow), Defendant.</p>	}	<p>On Bill, &c. Order of Reference.</p>	<p>10</p>
			<p>20</p>

This matter being opened to the Court by Hart and Vanderwart, solicitors for and of counsel with the complainant; and William De Lorenzo, solicitor for and of counsel with the defendant; and upon reading the consent hereto underwritten: It is thereupon, on this 28th day of October, 1925,

ORDERED, that the above stated cause be referred to Hon. V. M. Lewis, one of the Vice Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

We consent to the making of the above order.

HART AND VANDERWART,
Solicitors of Complainant,

WM. DE LORENZO,
Solicitor of Defendant.

Designation.

IN CHANCERY OF NEW JERSEY.

	Between	} On Bill, &c. Designation.
10	THE CITY NATIONAL BANK OF HACK- ENSACK, NEW JERSEY, a national banking corporation of the United States of America, Complainant,	
	and	
	ANTONETTA DI NAPOLI (widow), Defendant.	

20 Application being made to fix a time and place
for the hearing of the above stated cause, it is

ORDERED, that Tuesday, the eleventh day of
May, 1926, at the hour of ten o'clock in the fore-
noon, at the Chancery Chambers, Paterson be, and
the same is hereby designated as the time and place
for the hearing of the said cause.

30 Dated: December 17, 1925.

VIVIAN M. LEWIS,
Vice Chancellor.

We hereby consent to the making of the above
order.

40 HART & VANDERWART,
Solicitors of Complainant,

W. DE LORENZO,
Solicitor of Defendant.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between THE CITY NATIONAL BANK OF HACK- ENSACK, NEW JERSEY, a national banking corporation of the United States of America, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> ANTONETTA DI NAPOLI (widow), <div style="text-align: right;">Defendant.</div>	}	On Bill, &c. Testimony.	10
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Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the eleventh day of May, nineteen hundred and twenty-six, before HON. VIVIAN M. LEWIS, Vice Chancellor.

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APPEARANCES:

HART & VANDERWART, ESQS., for the complainant (represented by Mr. Vanderwart).

30

WRIGHT, VANDER BURGH & MCCARTHY, ESQS., for the defendants (represented by Mr. Wright).

HERBERT VICTOR WIDMAN, being duly sworn, testified as follows:

Direct examination by Mr. Vanderwart:

Q. Mr. Widman, I show you bond and mortgage, Antonetti Di Napoli and Gaetano Di Napoli, her husband, to Charles Rosenberg, Trustee, and I ask you if this mortgage was executed in your presence? A. Yes, sir.

40

Herbert Victor Widman, direct.

Q. Is this your signature upon the mortgage? A. It is.

Q. Are you a Notary? A. Yes, sir.

Q. Have you your certificates here? A. I have.

Q. Did you take the acknowledgment upon this mortgage? A. I did.

Q. And this is your signature upon the acknowledgment? A. It is.

Q. Did you see the bond signed also, Mr. Widman? A. Yes, sir.

Q. Your signature is not there, but it is a fact that you saw it signed? A. Yes, sir.

Mr. Vanderwart: I offer them in evidence, both the bond and mortgage.

Marked "Exhibits C 1" and "C 2."
Cross-examination by Mr. Wright:

Q. You saw this acknowledged on the day it bears date, September 11, 1924? A. Yes, sir.

Q. Where was it acknowledged? A. At the bank—City National Bank, Hackensack.

Q. Did you know Mrs. Di Napoli previous to the acknowledgment? A. No, sir, that was the first time I ever saw her.

Q. Do you hold any position in the bank? A. I am the cashier.

Q. So the entire transaction was under your direction and supervision? A. No, sir, it was not.

Q. But you knew all the facts connected with the transaction? A. No, sir, I did not.

Q. Do you know how much is due on the mortgage? A. Yes, sir.

Q. At the time the mortgage was executed at the bank, did the bank advance any money to Mrs. Di Napoli? A. No, sir.

Q. At the time it was executed? A. No, sir.

Herbert Victor Widman, direct.

Q. Did it subsequently give her any money? A. No, sir.

Q. At the time the mortgage was executed on September 1, 1924, had they advanced any money to Mr. Di Napoli? A. May I explain the circumstances?

Q. Yes. A. Only on the basis of a certified check on a bid. 10

Q. When did you advance on certified check? A. Those were advanced at various times since the account was opened for only a period of ten days each.

Q. That is what is commonly known as a bid check? A. Yes, sir.

Q. But you were to advance money to Mr. Di Napoli after the execution of the mortgage? A. Yes, sir. 20

Q. He had not started the contract at that time? A. He was awarded the contract; whether he actually began work, I don't know.

Q. Subsequently, from time to time, you did advance money to him on his note? A. Yes, sir, on the note of Di Napoli & Son, the partnership.

Q. Mrs. Di Napoli was no part of that partnership? A. No, sir. 30

Q. Now, when this was signed, this bond and mortgage was signed, who was present? A. Four people—Mr. Rosenberg, Mr. Di Napoli, Mrs. Di Napoli and myself.

Q. Was not James Di Napoli there, too? A. No, sir.

Q. Are you sure of that? A. I am.

Q. Did you have any conversation with Mrs. Di Napoli? A. Yes, sir. 40

Q. Do you speak Italian? A. No, sir.

Q. Does she speak English? A. Brokenly, not very well.

Herbert Victor Widman, redirect.

10 Q. What did you say to her? A. I asked her if she knew what she was signing; I asked her if she knew that was a mortgage of her husband's; I asked her if she knew that the bond and mortgage was given as security, as collateral for the Di Napoli & Son loans, so that they could go ahead; and I asked her if she signed that of her own free will and accord, to all of which she replied "Yes."

Q. As a matter of fact, there was no money advanced on this bond—the moneys were advanced upon notes which were given from time to time as Di Napoli & Son desired money? A. Yes, sir.

Mr. Wright: I have no objection to its admission.

20

Re-direct examination by Mr. Vanderwart:

By the Court:

Q. \$5500.00 is due on this mortgage, and interest from the due dates of the note? A. Yse, sir.

Q. Those are the notes that are due the bank from the Di Napoli; they went to protest? A. Yes, sir.

30

The Court: Put them in evidence.

40

Mr. Vanderwart: I offer in evidence note dated March 16, 1925, signed by Di Napoli & Son, by James Di Napoli, in the sum of \$1500.00; the second, dated March 2, 1925, by the same maker, in the sum of \$3000; the third, dated March 16, 1925, by the same maker, in the sum of \$1000, and in each of them the City National Bank is named as the payee, together with protest certificates attached to each one; issued to the maker, and in one case the indorser.

Herbert Victor Widman, redirect.

Mr. Wright: No objection.
Marked "Exhibits C 3, C 4, C 5."

Re-direct by Mr. Vanderwart:

Q. Have you figured the interest on those? A. I have. 10

Q. What is the total balance due? A. \$5,857.00.

The Court: It might be a good plan to introduce in the direct case the bank account showing the deposits of everything received from this mortgage to Di Napoli & Son.

Q. Will you get the record of the bank showing whether this money was deposited, and its date; what record is that you have with you? A. This is the account of Di Napoli & Son with the City National Bank. 20

The Court: What is your trouble with this matter, Mr. Wright?

Mr. Wright: This is the separate property of this woman—separate estate; I simply want to get the dates. 30

The Court: It must be due.

Mr. Vanderwart: The record shows that it is her separate estate; that is the record.

Mr. Wright: The bill of complaint alleges that as a fact.

Mr. Vanderwart: The title of the land is in her own name.

The Court: What is the total amount due on these notes and the mortgage? 40

The Witness: \$5,837.00.

Herbert Victor Widman, recross.

Re-cross-examination by Mr. Wright:

Q. As a matter of fact, does not Di Napoli & Son owe you more than \$5,800.00 on notes, don't they?

A. No, sir, they do not.

10 Q. At the time Mr. Di Napoli died on February 11, they owed you more than \$5,800.00, didn't they?

A. I could not answer that without the records.

Q. This would show you? A. No, sir, it would not.

Q. Isn't it a fact, that on February 11, you charged against the account of Di Napoli the sum of \$3,500.00, as a credit on the amount of moneys they owed you on notes? A. I cannot say that.

20 Q. It is a fact that you exaccepted (the bank records of the amounts of Di Napoli & Son, marked "Exhibits C 7 and C 8") note, I show you "Exhibit C 7," and call your attention to a charge against the account of Di Napoli on February 11, 1925, for \$3,500.00; that is a charge against your account?

A. It is a debit to their account.

30 Q. So far as this particular exhibit shows, it might be either a check or a charge paid by you transferring funds for payment of notes for other purposes? A. Yes, sir.

Q. Now, have you any records which will show what that transfer was made for—whether it was upon a check to some third party or moneys charged up by you as against notes? A. No, sir.

Q. I also call your attention to the item of \$3,000 debited to the account of March 2, 1925; can you give us any idea as to what that debit consisted of?

40 A. I can give you none that that is a renewal of a note—

Q. There is as against the \$3,000 debit on March 2, a credit of \$2,185 as of that date? A. Yes, sir.

Herbert Victor Widman, recross.

Q. That would indicate to you that it was a renewal of a \$3,000 note? A. It would appear so, yes.

Q. But there is no such credit against the entry of February 11th? A. No, sir, there is not.

Q. Looking at the column of new balance on "Exhibit C 7"—looking at the column headed "New Balance" on "Exhibit C 7" on February 11, just prior to the debit of \$3,500 that I have referred to, it shows a balance of how much? A. \$3,577.67.
Re-direct examination by Mr. Vanderwart:

10

Q. What position do you hold in the bank? A. Cashier.

Q. Do you keep the minutes? A. This mortgage is given to a trustee; it is not made directly to the bank.

20

Mr. Vanderwart: I want to prove that the man to whom it was given was an official of the bank, and I am going to show that he later assigned the mortgage to the bank.

Mr. Wright: That is alleged and admitted in the pleadings. It is admitted that Mr. Rosenberg, the mortgagee named in "Exhibits C 1" and "C 2," as trustee, is the vice president of the complainant, and that the bond and mortgage were taken in his name as trustee to secure loans to be made to Di Napoli.

30

The Court: Is that admitted?

Mr. Vanderwart: To Di Napoli & Son. The loans were made to a third person, to Di Napoli & Son; and she joined with her husband in the execution of a mortgage. I would like to introduce the assignment.

40

Marked "Exhibit C 9½."

James Di Napoli, direct.

The only other thing in the opening to be put upon the record is the death of Gaetano Di Napoli, one of the makers of the mortgage.

10 Mr. Wright: On February 11, 1925, and that is admitted by the answer.

Mr. Vanderwart: We rest.

Mr. Wright: We move for dismissal.

The Court: Do you rest? Are you willing to rest? That is up to you. I would not rest in the Court of Chancery; it is too dangerous a proposition.

20 Mr. Wright: Then I will proceed. This lady does not speak English. Have you any objection to this man acting as interpreter?

Mr. Vanderwart: I am not sure that an interpreter is necessary.

JAMES DI NAPOLI, being duly sworn, testified as follows:

Direct examination by Mr. Wright:

30 Q. Where do you live? A. Hackensack, New Jersey.

Q. What was your father's name? A. Gaetano Di Napoli.

Q. Were you associated with him in any firm during the year 1924 or 1925? A. Yes, sir.

Q. What? A. Contracting business, Di Napoli & Son, a partnership.

Q. Where did you do your banking business? A. City National Bank.

40 Q. I show you "Exhibit C 3, C 4, C 5"; are those notes signed by you in each case? A. Yes, sir.

Q. Those were all signed by you after your father's death? A. Yes, sir.

Mrs. Antonetta Di Napoli, direct.

Q. Did you know of the execution of this bond and mortgage to Mr. Rosenberg as trustee? A. Yes, sir.

Q. At the time it was executed was there any money due to the City National Bank by Di Napoli & Son? A. No, sir.

Q. Or your father? A. No, sir.

Q. And after that time, what did you do; did you borrow any money from the bank? A. Yes, sir, from time to time as we needed it—on notes—

Q. Did any of that money go to your mother? A. No, sir.

Q. Did she have any interest in the partnership? A. No, sir.

Q. The proceeds of these notes which I am showing you, marked "Exhibits C 3, C 4, C 5"; to whom did that money go? A. Di Napoli & Son got it.

Cross-examination by Mr. Vanderwart:

Q. Do you know how much was due on the other mortgages upon Mrs. Di Napoli's property at the time this \$6,000 was received from the bank?

Mr. Wright: Objected to as immaterial and irrelevant.

The Court: Objection overruled.

Q. Do you know? A. No, sir.

Q. Don't you know, as a matter of fact, that a portion of the money received from the bank when this mortgage was executed, went to pay the second mortgagee, a man named Parciasepe; do you know that? A. No, sir.

MRS. ANTONETTI DI NAPOLI, being duly sworn through the interpreter, testified as follows: (The interpreter not being sworn, being an official interpreter of the County Courts):

Mrs. Antonetta Di Napoli, direct.

Direct examination by Mr. Wright:

Q. You are the widow of Gaetano Di Napoli?

A. Yes, sir.

10 Q. Are you the owner of the property described in this mortgage, which is located at 118 Lodi Street? A. Yes, sir.

Q. How long have you owned the property? A. I don't know—nine or ten years, maybe less; I don't know.

Q. You own it in your name? A. Yes, sir.

Q. I show you "Exhibit C 1" and ask you if that is your signature? A. Yes, sir.

20 Q. And do you remember when you signed that? A. No, sir; I remember the month, but I don't remember the date.

Q. What month was it? A. The month of September, I don't remember the day; I did not ask my husband.

Q. Did you receive any of the moneys advanced by the City National Bank or Mr. Charles Rosenberg as trustee for that bank? A. No, sir, I don't know nothing.

30 The Court: Is it charged in the bill that she is the owner herself?

Mr. Wright: Yes, sir.

The Court: Her separate estate?

Mr. Wright: Yes, sir.

By the Court:

Q. Do you remember when the property was purchased? A. No, sir.

40 Q. Who paid for it? A. My husband had charge of it.

Q. Was it his cash? A. No, sir.

Q. Whose money was it? A. My husband's, the money belonged to my husband.

Mrs. Antonetta Di Napoli, direct.

Q. Where did he get it from? A. I don't know anything about that; there are mortgage on the house; I don't even know who they are.

Cross-examination by Mr. Vanderwart:

Q. The property used to be in your husband's name, didn't it? A. Yes, sir.

10

Q. And about how long ago was it put in your name, Mrs. Di Napoli? A. I don't remember whether it was nine or ten years; maybe more and maybe less, I don't know.

Q. Now, there is a house on that property, isn't there? A. Yes, sir.

Q. And who built that house? A. My husband.

Q. Who paid the bills for it? A. My husband.

Q. Your husband was in what business at that time? A. Don't ask me so many things, because I don't know nothing; I only know the small things and not the big ones; I did not bother with my husband's business.

20

Q. Do you remember when the property was put in your name—why it was put in your name, Mrs. Di Napoli? A. No, sir.

Q. You don't remember why? A. No, sir.

Q. Now, this mortgage that you made to the bank, Mrs. Di Napoli, this was agreeable to you, wasn't it, to make that mortgage, wasn't it? A. No, sir.

30

Q. What was the amount of the first mortgage on your house, Mrs. Di Napoli? A. \$5,000.

Q. Who owns that? A. I don't even know the person.

Q. Who pays the interest on it? A. I don't know who they are.

Q. Don't you go to any place to pay the interest? A. No, sir, I don't go out walking.

40

Q. Your husband usually paid that interest,

Mrs. Antonetta Di Napoli, direct.

didn't he? A. Yes, sir, he was in charge of everything.

Q. He had charge of everything? A. Yes, sir.

Q. Who holds the second mortgage on the property? A. I don't know.

10 Q. You don't know the amount of it? A. I think it is \$2,000.

Q. Don't you know, Mrs. Di Napoli, as a matter of fact, that a part of the money which was obtained at the City National Bank when you signed this mortgage, went to pay off the second mortgage on the house, or a part of it? A. I don't know anything about money from the bank; I did not go to any bank.

20 Q. Didn't you sign this mortgage at the bank?
A. No mortgage; they made me put my name down and sign, but I did not know what it was.

Re-direct examination by Mr. Wright:

Q. When you signed this thing, did anyone tell you what it was? A. No, sir.

Q. Do you understand English? A. No, sir, I don't understand it—only the name I know how to write.

30 Q. Your husband told you what you were going down for? A. No, sir, I can swear to that.

Q. What did he tell you? A. He told me to come along with him, and when I went with him we went to Rosenberg's office, me and my husband and my son, and they made me sit down and made me write my name twice.

Q. That was where? A. In the office of Rosenberg.

40 The Court: I do not assume for a moment that there was any fraud practiced on her.

Mr. Wright: No actual fraud.

Mr. Wright: We rest.

REBUTTAL.

CHARLES ROSENBERG, being duly sworn in rebuttal, testified as follows:

Direct examination by Mr. Vanderwart:

Q. You are the vice-president of the bank—the complainant? A. Yes, sir. 10

Q. Do you recall this transaction of the loan of \$6,000 in the execution of this bond and mortgage? A. Yes, sir.

Q. Tell the Court about it. A. Mr. Di Napoli had credit to the extent of bid checks until such time as he came in to me and told me that he needed some money to finance a job at Dumont, New Jersey. Mr. Di Napoli came in to see me several days prior to September 11, and he brought in a statement of just what money he would need on September 11th of that particular year; and this writing is in the son's handwriting, at which time he needed \$4,800, and also said that the second mortgagee was pressing him for some money, and that he ought to have \$1,000 towards that second mortgage—towards the payment on the second mortgage. I knew Mr. Di Napoli for nearly thirty years, and knowing about his difficulty that he had in the past, sentiment entered into the thing, and I thought I would give him a chance. His financial statement did not warrant any kind of a loan; so I asked him if he could offer any security, and I would be willing to help him on this new job; he said he had the house to offer, and that there was a first mortgage, I believe, of \$5,500.00, and a second mortgage of \$1,500.00; but he was going to reduce the second mortgage by about \$1,000. I don't think 20 30 40

Charles Rosenberg, direct.

10 that at that time I went into details with him regarding the actual ownership of the house; but it developed subsequently, that the house belonged to his wife, that is, it was in her name. I told him it would be necessary to give us some kind of collateral security, and he suggested that the bond and mortgage be drawn, and he brought his wife up to my office in the bank. I went into this thing with Mr. and Mrs. Di Napoli and explained just what had been told to me by Mr. Di Napoli regarding his contract and regarding the payment on his mortgage, explaining the thing fully to her, as I thought. She understood English pretty well. And then I sat down to go into this business with Mr. Di Napoli, and turned her over to Mr. Widman. That is
20 about all there is to the story.

Q. What do you say as to her understanding what was said at that time at the bank? A. It was made very clear to her, and she understood it pretty well at the time, and she acknowledged that she did, to me.

Q. Have you known Mrs. Di Napoli for some time? A. A great many years.

30 Q. And have you known of her knowledge of English and her ability to understand it? A. I have not come in close contact with her for a number of years, but she led me to believe at that time that she understood everything that I told her. I went into details with her, and she took part in the talk that we had about the mortgage.

40 Q. What part did she take? A. She answered and told me she thought it was all right, that he was proceeding nicely with his work; I don't remember just the talk that took place there.

Q. You said you heard Mrs. Di Napoli say: "This is all right"—you said to her, "Mrs. Di Napoli, this is all right;" and she said, "Yes." A. I did not say

Charles Rosenberg, cross.

it in those words, I said, "Your husband is in for some money;" the job had just been awarded to him at the time, and I said, "He will have to have collateral security for his loan;" and I said to her, "Under ordinary circumstances, I would not loan him anything," but that since I had known them so many years, I would go along with him to see if he could not get on his feet again. We talked for fully fifteen minutes; I don't remember just what she said, but it was not just "Yes" or "No," we talked together about the thing.

10

Cross-examination by Mr. Vanderwart:

Q. Did she make any objections to signing it all? A. No, sir, she was quite agreeable.

20

Mr. Vanderwart: It is our claim that she knew what she was doing.

Both sides rest.

Mr. Wright: I move for a dismissal of the bill.

30

The Court: I am inclined to dismiss it, but I will hear argument on the 14th of June. The Maywood argument comes up on the 14th of June, and I will take this up at the same time.

The Court: Make me a copy of the case.

Mr. Vanderwart: I shall need a copy, also.

40

IN CHANCERY OF NEW JERSEY.

10	Between THE CITY NATIONAL BANK OF HACK- ENSACK, New Jersey, a National Banking Corporation of the United States of America, Complainant, and ANTONETTI DI NAPOLI, widow, Defendant.	} On Bill, &c. Testimony.
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20 Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the 22nd day of September, nineteen hundred and twenty-six, before HON. VIVIAN M. LEWIS, Vice Chancellor.

APPEARANCES:

30 HART & VANDERWART, ESQS., represented by Mr. Vanderwart, for the complainant. WRIGHT, VANDER BURGH & MCCARTHY, ESQS., represented by Mr. Vander Burgh, for the defendant.

Mr. Vanderwart: I have served notice to produce the paid mortgage upon Mr. Rice, and I think he has it in court.

HERBERT V. WIDMAN, being duly sworn, testified as follows:

40 Mr. Vanderwart: First, I would like to put in evidence this mortgage, which is a second mortgage upon the property. Marked "Exhibit V-J1."

Herbert V. Widman, direct.

Direct examination by Mr. Vanderwart:

Q. You have testified that you are the cashier of the City National Bank of Hackensack, New Jersey? A. Yes, sir.

Q. I show you a check, Number 125, signed "Napoli & Son," which is certified. Have you seen that before? A. Yes, sir. 10

Q. Was it in your possession? A. Yes, sir.

Q. Under what circumstances did you see it and have it in your possession? A. We retain certified checks.

Q. When was it issued? A. January 15, 1925.

Q. I show you a promissory note, which is in evidence in this case, dated March 16, 1925, in the sum of \$1,500.00, which is one of the notes upon which this action is brought to foreclose the mortgage, and I ask you if that check has any relation to that note? A. This is a renewal of the note given us at the time the certified check was issued. 20

Q. So that the proceeds from that note went to whose account? A. Di Napoli & Son.

Q. And was it at that time that that check was certified? A. Yes, sir.

Q. Your accounts show, then, that the money from that note is represented by this check? A. They do. 30

Mr. Vanderwart: I offer it in evidence.

Mr. Vander Burgh: Objected to.

The Court: I will receive it subject to the objection.

Marked "Exhibit V-J 2 for identification."

Q. This check is drawn to Salvatore Pianese; do you know him? A. Yes, sir. 40

Q. Is he in court? A. He is.

Q. Was this check cashed at your bank? Can

Salvatore Pianese, direct.

you tell from looking at the check? A. It was not, no, sir.

Q. Where was it cashed? A. At the Hackensack Trust Company.

No cross-examination.

10

SALVATORE PIANESE, being duly sworn, testified as follows:

Direct examination by Mr. Vanderwart:

Q. Mr. Pianese, do you know Mr. Noe Parciasepe? A. Yes, sir.

20

Q. Is he the man who held this mortgage upon the property of Gaetano Di Napoli? A. Yes, sir, he is my brother-in-law.

Q. Did you have anything to do with the loaning of the money represented by this mortgage? A. No, sir, my brother-in-law paid the money.

Q. You know he paid the money, do you? A. Yes, sir.

30

Q. Now, I show you a check, dated January 15, 1925, drawn to your order, Salvatore Pianese? A. Di Napoli & Sons gave this check to me to pay the mortgage to Noe Parciasepe, my brother-in-law, and my brother-in-law said, "I want the money in cash;" and the next day I cashed the check in the Trust Company; they gave me three five hundred dollar bills; I was in company with Mr. Di Napoli.

40

Q. What did you do after you got the three five hundred dollar bills from the Trust Company with Mr. Di Napoli; what did you do with it; what did you do with the money when you got it? A. I gave it to my brother-in-law.

Q. Where did he live? A. In Paterson.

Salvatore Pianese, direct.

Q. When did you give it to him; what day? A. The next day—the 16th of January, 1925.

Q. Who was with you when you paid him the money? A. Mr. Di Napoli and the wife of my brother-in-law.

Q. Mr. Di Napoli was with you? A. Yes, sir.

10

Q. And did you ever get any paper from Mr. Parciasepe? A. The next day he sent me the mortgage and the receipt, and I received this thing and gave it to Mr. Di Napoli.

Q. And is this what he gave you (showing mortgage, Di Napoli to Parciasepe)? A. This and a piece of paper, signed by my brother-in-law and his wife.

20

Mr. Vanderwart: I ask that this be marked in evidence now, this check.

Mr. Vander Burgh: I object to the check going in evidence, on the ground that even though this particular check came from the account of Di Napoli & Son, and was in payment of the particular mortgage against the property, it is immaterial in this matter.

The Court: I will note the objection.

30

Marked "Exhibit V-J 2."

Both sides rest.

40

Exhibit C-1.

M. J. MORT. INT. INS., TAX & ASS'T (CONDITION PRINTED.) 149.

O 102184

The W. H. Shurtz Co., Law Blank Publishers,
280-284 Plane Street, Newark, N. J.

This Indenture,

Made the Tenth day of September in the year of
our Lord One Thousand Nine Hundred and Twenty-four
Between ANTONETTA D1NAPOLI AND GAETANO D1NAPOLI, her husband

of the City of Hackensack in the County of
Bergen and State of New Jersey party of the First Part;
And CHARLES ROSENBERG, TRUSTEE

of the City of Hackensack in the County of
Bergen and State of New Jersey party of the Second Part;
Whereas, the said ANTONETTA D1NAPOLI AND GAETANO D1NAPOLI, her husband

are justly indebted to

the said party of the Second Part, in the sum of

Six thousand (\$6,000) Dollars,
lawful money of the United States of America, secured to be paid by their certain bond
or obligation, bearing even date with these presents, in the penal sum of

Twelve thousand (\$12,000) Dollars,
lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of
Six thousand (\$6,000) Dollars,

lawful money as aforesaid, to the said party of the Second Part, his heirs executors,
administrators or assigns, on the Tenth day of December
which will be in the year One Thousand Nine Hundred and Twenty-four and interest
thereon, to be computed from September 10, 1924 at and
after the rate of six per cent. per annum, and to be paid at maturity.

And it is thereby expressly Agreed that should any default be made in the payment
of the said interest or of any part thereof, on any day
whereon the same is made payable, as above expressed, or should any tax, assessment, water rent
or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or
acquired upon the premises described in this mortgage, and become due and payable, and should
the said interest remain unpaid
and in arrears for the space of thirty days, or said tax, assessment, water rent
or other municipal or governmental rate, charge, imposition or lien, or any or either of them
remain unpaid and in arrears for the space of sixty days, then and from
thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case
may be, the aforesaid principal sum of

Six thousand (\$6,000) Dollars

with all arrearage of interest thereon, shall, at the option of the said party of the Second Part,
or his legal representatives, become and be due and payable immediately thereafter, although
the period above limited for the payment thereof may not then have expired, anything therein
before contained to the contrary thereof in anywise notwithstanding: as by the said bond or
obligation, and the condition thereof, reference being thereunto had, may more fully appear.

C 1

Exhibit C-1.

Now, this Indenture Witnesseth, That the said party^s of the First Part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the Second Part, at or before the encasing and delivery of these presents, the receipt whereof is hereby acknowledged, have , granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the Second Part, and to his heirs and assigns forever,

All those certain
 tract^s or parcel^s of land and premises, hereinafter particularly described, situate, lying and being
 in the City of Hackensack in the County
 of Bergen and State of New Jersey. and which on a
 certain map entitled "Map of Property of Matthew Andronico, Hackensack, N.J." filed in the Bergen County Clerk's Office on October 16th, 1908 as Map No. 1167, are known and designated thereon as lots numbers two (2) and three (3) in block number (1), excepting and reserving out of the same all that lot, tract or parcel of land and premises heretofore conveyed by the said Gaetano DiNapoli and wife to Fedele Toriello by deed bearing date the 26th day of October, 1931 and recorded in the Bergen County Clerk's Office in Book 865 of Deeds, page 364, beginning at a point in the northwesterly corner of lands of the said party of the first part (Gaetano DiNapoli) which point is also the southwesterly corner of lands of the party of the second part (Fedele Toriello) which is distant southerly from the southerly side of Broadway one hundred and forty-three and fifty-four hundredths (143.54) feet; thence running (1) easterly and along the lands of the said party of the second part fifty (50) feet more or less to the southeasterly corner of lands of the said party of the second part, which is also the northeasterly corner of the lands of the said party of the first part; thence (2) southerly and along the division line between lots numbers one (1) and two (2) as laid out on a map entitled "Map of Property of Matthew Andronico, Hackensack, N.J." fifteen and forty-five hundredths (15.45) feet to a point, thence (3) westerly fifty (50) feet to a point in the easterly line of lands of the Board of Education of the Township of New Barbadoes; thence (4) northerly and along said lands of the Board of Education fourteen and eighty-one hundredths (14.81) feet to the point or place of beginning.

Exhibit C-1.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the First Part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold, the above granted and described premises with the appurtenances, unto the said party of the Second Part, his heirs and assigns, to their own proper use, benefit and behoof forever. Provided always, and these presents are upon this express condition, that if the said party of the First Part, their heirs, executors or administrators, shall well and truly pay unto the said party of the Second Part, his executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said parties of the first part for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the Second Part, his heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

And it is agreed that neither the mortgagors, nor the heirs or assigns of the mortgagors, shall be entitled to any credit on the interest payable on this mortgage for the taxes which may be levied on the mortgaged premises or for any part of such taxes.

And it is also agreed by and between the parties to these presents, that the said party of the First Part shall and will keep the building or buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies, to an amount not less than

Dollars,

and assign the policy and certificate thereof to the said party of the Second Part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the Second Part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest.

In Witness Whereof, the said party of the First Part, have hereunto set their hands and seals the day and year first above written.

Witness my hand and seal, Sealed and Delivered }
in the presence of }

W. K. Kellman

Antonietta Di Napoli
Gaetano Napoli

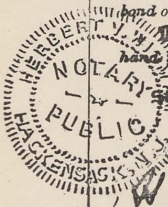


Exhibit C-1.

State of New Jersey,
County of BERGEN } ss.

Be it Remembered, That on this Eleventh day of September
in the year of our Lord, One Thousand Nine Hundred and Twenty-four
before me, the subscriber, a Notary Public of New Jersey

personally appeared

ANTONETTA DINAPOLI AND GAETANO DINAPOLI, her husband,

who, I am satisfied, are the mortgagors mentioned in the within Indenture, to whom I
first made known the contents thereof, and thereupon they acknowledged that they
signed, sealed and delivered the same as their voluntary act and deed, for the uses and
purposes therein expressed;

And the said

H. B. Kidman
Notary Public of N. J.

being by me privately examined, separate and
apart from said husband, further acknowledged that signed, sealed and delivered
the same as voluntary act and deed, FREELY, without any fear, threats or
compulsion of said husband

Am. Ins., Tax and Ass't (Condition Printed)-142.

Mortgage

ANTONETTA DINAPOLI AND
GAETANO DINAPOLI, her husband

TO

166354

CHARLES ROSENBERG, TRUSTEE

RECORDING FEE \$ 3.75
PAID

Dated 1924

Received in the Clerk's Office
of the County of Bergen, N. J.,
on the 11 day of September
A. D., 1924 at 1:11 o'clock in the
afternoon, and recorded in Book
700 of MORTGAGES for said
County, on pages 314, &c.

W. F. Eagan
County Clerk

INDEXED

Antipatrol Dub

ms

REC'D IN BERGEN CO.
CLERKS OFFICE
REGISTRY DIVISION

SEP 11 1924 1 11 PM

Exhibit C-2.

N. J. BOND.—INT., TAX AND ASS'Y.—CONDITIONS PRINTED.—148.

A 4242

The W. H. Shurtz Co., Law Blank Publishers,
280-284 Plaza Street, Newark, N. J.**Know all Men by these Presents:**

That ANTONETTA DINAPOLI AND GAETANO DINAPOLI, her husband

of the City of Hackensack in the County of
Bergen and State of New Jersey

are held and firmly bound unto
CHARLES ROSENBERG, TRUSTEE

of the City of Hackensack in the County of
Bergen and State of New Jersey

in the penal sum of ¹⁷⁰⁰⁰
Fourteen thousand (\$12000) Dollars
lawful money of the United States of America, to be paid to the said
CHARLES ROSENBERG, TRUSTEE

his heirs, executors, administrators or assigns: for which payment well and
truly to be made, they bind themselves, their heirs, executors
and administrators, firmly by these presents. Sealed
with their seals Dated the Tenth day of September One
Thousand Nine Hundred and Twenty-four

The Condition of the above obligation is such that if the above bounden
ANTONETTA DINAPOLI AND GAETANO DINAPOLI, her husband,

their heirs, executors or administrators, shall well and truly pay, or cause to be paid
unto the above named CHARLES ROSENBERG, TRUSTEE

his heirs
executors, administrators or assigns, the just and full sum of
Seven thousand (\$6,000) Dollars

on the Tenth day of December which will be in the year
One Thousand Nine Hundred and Twenty-four and the interest thereon, to
be computed from September 10, 1924. at and after the
rate of six per cent. per annum, and to be paid at maturity

without any fraud or other delay, then the above obligation to be void otherwise to remain in full
force and virtue.

CV

Exhibit C-2.

And it is hereby expressly agreed, that should any default be made in the payment of the said interest,

or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest

remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of money, or so much thereof as may then remain unpaid, with all arrearage of interest thereon, shall, at the option of the said obligee, or the legal representatives of the said obligee, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

And it is further expressly agreed, that the said obligor shall not be entitled to and will not claim any credit on the interest payable on the mortgage securing this bond for taxes which may be levied upon the mortgaged premises, or for any part of said taxes.

Signed, Sealed and Delivered in }
the presence of

Antonetta Gi. Napoli
Guatoni, Nepal.

STAMP
50 CENTS

STAMP
50 CENTS

STAMP
2 DOLLARS

Exhibit C-3.

United States of America }
State of New Jersey. } ss.
County of Bergen

On the 16 day of April 1925

at the request of the CITY NATIONAL BANK, HACKENSACK, N. J.

I, ARTHUR F. LAUER a Notary Public of the State of New Jersey, duly commissioned and sworn, did present the original Note hereunto annexed, to THE CITY NATIONAL BANK OF BERGEN CO., HACKENSACK

in the and demanded payment, who refused to pay the same.

Whereupon I, the said Notary, at the request aforesaid, did Protest, and by these presents do publicly and solemnly Protest, as well against the Drawer and Endorsers of the said Note as against all others whom it doth or may concern for exchange, re-exchange and all costs, damages and interest already incurred, and to be hereafter incurred for want of payment of the same.

Thus done and Protested in the presence of John Doe and Richard Roe, witnesses.

IN TESTIMONIUM VERITATIS.

ARTHUR F. LAUER Notary Public.

United States of America, }
State of New Jersey } ss.
County of Bergen

I, ARTHUR F. LAUER a Notary Public of the State of

New Jersey, duly commissioned and sworn do hereby Certify, that on the 16 day of April 1925 one thousand nine hundred and twenty five due notice of the presentment and protest of the said Note after demand and refusal of payment thereof, by notice, partly written and partly printed, signed by me, was given by me to the Drawer and respective endorsers of the said instrument by depositing the same in the Post Office at Hackensack, N. J. (prepaying the postage thereon), duly directed and superscribed to said Drawer and endorsers, as follows, to wit:

To Di Napoli & Son

the above-named places being the reputed places of residence of the persons to whom such notice was so addressed, and the Post Office nearest thereto.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Hackensack, N. J. ARTHUR F. LAUER



Notary Public.

63

No. 9390

HACKENSACK, N. J. MAR 16 1925 192

One month AFTER DATE we PROMISE TO PAY

TO THE ORDER OF THE CITY NATIONAL BANK, \$1000⁰⁰

One thousand DOLLARS
100

AT **The City National Bank** OF HACKENSACK, N. J.

FOR VALUE RECEIVED WITHOUT DEFALCATION.

DUE April 16

Li. Napoli & Son
By James Li. Napoli

F 14-5M-9-24

ADDRESS

Exhibit C-3.

Exhibit C-4.

United States of America }
 State of New Jersey. } ss.
 County of Bergen

On the 2 day of April 1925

at the request of the CITY NATIONAL BANK, HACKENSACK, N. J.

I, ARTHUR F. LAUER a Notary Public of the State of New Jersey, duly commissioned and sworn, did present the original Note hereunto annexed, to THE CITY NATIONAL BANK OF BERGEN CO., HACKENSACK

in the and demanded payment, who refused to pay the same.

Whereupon I, the said Notary, at the request aforesaid, did Protest, and by these presents do publicly and solemnly Protest, as well against the Drawer and Endorsers of the said Note as against all others whom it doth or may concern for exchange, re-exchange and all costs, damages and interest already incurred, and to be hereafter incurred for want of payment of the same.

Thus done and Protested in the presence of John Doe and Richard Roe, witnesses.

IN TESTIMONIUM VERITATIS.

ARTHUR F. LAUER Notary Public.

United States of America, }
 State of New Jersey } ss.
 County of Bergen

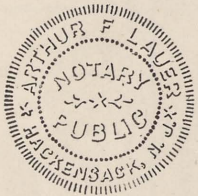
I, ARTHUR F. LAUER a Notary Public of the State of New Jersey, duly commissioned and sworn, do hereby Certify, that on the 2 day of April one thousand nine hundred 25 Note due notice of the presentment and protest of the said Note after demand and refusal of payment thereof, by notice, partly rewritten and partly printed, signed by me, was given by me to the Drawer and respective endorsers of the said instrument by depositing the same in the Post Office at Hackensack, N. J. (prepaying the postage thereon), duly directed and superscribed to said Drawer and endorsers, as follows, to wit:

To: Sh. Nepal & Son
James Sh. Nepal

the above-named places being the reputed places of residence of the persons to whom such notice was so addressed, and the Post Office nearest thereto.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Hackensack, N. J.

ARTHUR F. LAUER Notary Public.



64

No. 9778

HACKENSACK, N. J.

March 2 1925

One month

AFTER DATE

eve

PROMISE TO PAY

TO THE ORDER OF

City National Bank

\$ 3000⁰⁰

Three thousand

100

DOLLARS

AT **The City National Bank** OF HACKENSACK, N. J.

FOR VALUE RECEIVED WITHOUT DEFALCATION.

DUE

Apr 2

F 14-5M-9-24

M. Napoli & Son.
James M. Napoli

ADDRESS

NAME

James M. Napoli

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

Salvatore P. Anese

Exhibit C-4.

Exhibit C-5.

United States of America }
 State of New Jersey. } ss. On the 16 day of April 1925
 County of Bergen }
 at the request of the CITY NATIONAL BANK, HACKENSACK, N. J.
 I, ARTHUR F. LAUER a Notary Public of the State of New Jersey, duly commissioned and sworn,
 did present the original note herewith annexed, to
 THE CITY NATIONAL BANK OF BERGEN CO., HACKENSACK

in the _____ and demanded payment, who refused to pay
 the same.

Whereupon I, the said Notary, at the request aforesaid, did Protest, and by these presents do
 publicly and solemnly Protest note as well against the Drawer and Endorsers of the said _____
 _____ as against all others whom it doth or may concern for
 exchange, re-exchange and all costs, damages and interest already incurred, and to be hereafter incurred
 for want of payment of the same.

Thus done and Protested in the presence of John Doe and Richard Roe, witnesses.

IN TESTIMONIUM VERITATIS.

ARTHUR F. LAUER Notary Public.

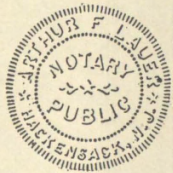
United States of America }
 State of New Jersey } ss. I, ARTHUR F. LAUER a Notary Public of the State of
 County of Bergen } New Jersey, duly commissioned and sworn, do hereby Certify, that
 of the 16 day of April one
 thousand nine hundred note due notice of the presentment and protest of the said _____
 _____ after demand and refusal of payment thereof, by notice, partly
 written and partly printed, signed by me, was given by me to the Drawer and respective endorsers of the
 said instrument by depositing the same in the Post Office at Hackensack, N. J. (prepaying the postage there-
 on), duly directed and subscribed to said Drawer and endorsers, as follows, to wit:

To Angelo Napoli & Son

the above-named places being the reputed places of residence of the persons to whom such notice was so
 addressed, and the Post Office nearest thereto.

In Testimony Whereof, I have hereunto set my hand and affixed my
 official seal at Hackensack, N. J. ARTHUR F. LAUER

Notary Public.



EL-

No. 9413

HACKENSACK, N. J. MAR 16 1925 192

One month

AFTER DATE we PROMISE TO PAY

TO THE ORDER OF THE CITY NATIONAL BANK,

\$1500⁰⁰

Fifteen hundred

100 DOLLARS

AT **The City National Bank** OF HACKENSACK, N. J.

FOR VALUE RECEIVED WITHOUT DEFALCATION.

DUE April 16

F 14-5M-9-24

di Napoli & Son.
By James Di Napoli

ADDRESS

NAME

Cynthia Tricelli

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

Salvatore Pinaese.

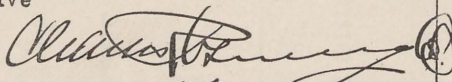
Exhibit C-5.

Exhibit C-5¹/₂.176-N. J. ASSIGNMENT OF MORTGAGE.
From an Individual to a Corporation.

A 3567

The W. H. Shurts Co., Law Blank Publishers,
280-284 Plane Street, Newark, N. J.**Know all Men by these Presents:****That****Charles Rosenberg, Trustee**of the city of Hackensack in the County of Bergen
and State of New Jersey, party of the First Part, in consideration of the sum ofOne (\$1) Dollar and other good and valuable considerations
lawful money of the United States of America, to me in hand paid bythe City National Bank, of Hackensack
a corporation of the State of New Jersey, and having its principal office in the city
of Hackensack, in the County of Bergen and State of New Jersey,
party of the Second Part, at or before the ensembling and delivery of these presents, the receipt
whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set
over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said
party of the Second Part, its Successors and Assigns, a certain Indenture of Mortgage bearing date
the Tenth day of September One Thousand Nine Hundred and
Twenty-four made byAntonetta DiNapoli and Gaetano Di Napoli, her husband on lands in
the city of Hackensack in the County of Bergen
and State of New Jersey, to secure the payment of the sum of
Six thousand (\$6,000) Dollars
which mortgage is recorded in the office of the Clerk of the
County of Bergen - and State of New Jersey, in Book #700 of Mortgages,
page 314, Etc.**Together with the bond or obligation therein described, and the money due and to grow due
thereon, with the interest. To have and to hold, the same unto the said party of the
Second Part, its Successors and Assigns forever**subject only to the proviso in the said Indenture of Mortgage mentioned: **And he**
does hereby make, constitute, and appoint the said party of the Second Part **his** true
and lawful attorney, irrevocable, in **his** name, or otherwise, but at its proper costs and
charges, to have, use and take all lawful ways and means for the recovery of all the said money and
interest; and in case of payment, to discharge the same as fully as **he** might or could do if
these presents were not made. **And he do es** hereby covenant, promise and agree, to and
with the said party of the Second Part, that there is now due and owing upon the said Bond
and Mortgage the sum of**In Witness Whereof,** he has hereunto set his Hand and Seal
the Sixth day of March in the year of Our Lord
One Thousand Nine Hundred and Twenty-fiveSigned, Sealed and Delivered }
in the Presence of

A. V. Bidman



Trustee.

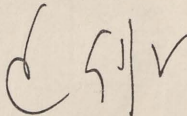


Exhibit C-5 1/2.

State of New Jersey, }
County of BERGEN } ss.:

On this Sixth day of March in the year of our Lord One Thousand Nine Hundred and Twenty-five before me, the subscriber,

a Notary Public of New Jersey

personally appeared

Charles Rosenberg, Trustee

who, I am satisfied, is the assignor in the within Deed of Assignment named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed:

H. F. Kidman
Notary Public of NJ

N. J. Assignment of Mortgage, Form 176.
From an Individual to a Corporation.

Assignment
of Mortgage

Charles Rosenberg, Trustee

219277

to City National Bank

of Hackensack, N.J.

Dated, 3/4 1925

Received in the Office of Clerk
of the County of Bergen N. J.,
on the 26 day of August
A. D., 1925 at 2:58 o'clock in the
after noon, and Recorded in Book
135 of Assignments of Mortgages
for said County, on pages 322 & 0

W. J. Egan
County Clerk.

Rel 10 11 1925
RECORDED

REC'D IN BERGEN CO.
CLERK'S OFFICE
REGISTRY DIVISION

AUG 26 1925 2 53 PM

Cons. n. de. n. p. n. l.

110

42

Exhibit C-7.

SHEET NO.		CITY NATIONAL BANK, HACKENSACK, N. J.									
		NAME					ADDRESS				
		Di Napoli & Son					18 Lodi Street Hackensack, N. J.				
OLD BALANCE	DATE	CHECKS IN DETAIL			DATE	DEPOSITS	DATE	NEW BALANCE			
BALANCE BROUGHT FORWARD											
210725.98					DEC 8 1924	210725.98				210725.98	
204640.34					DEC 1 1924					204640.34	
204640.34					DEC 1 1924					204640.34	
160920.04				12199-	DEC 1 1924					160920.04	
181044.66				300208-	DEC 1 1924	8964.16				181044.66	
130890.19					DEC 1 1924					130890.19	
90801.9					DEC 1 1924					90801.9	
89884.9					DEC 1 1924					89884.9	
66884.9					DEC 1 1924					66884.9	
1124358.22				1159-	DEC 1 1924	5875.00				1124358.22	
103712.29				2000.00-	DEC 1 1924					103712.29	
83799.66				8250-	DEC 1 1924					83799.66	
60666.07				481.99-	DEC 1 1924					60666.07	
34826.07				23091.0-	DEC 1 1924					34826.07	
22267.36				377.46-	DEC 1 1924					22267.36	
5218.97				150.00-	DEC 1 1924					5218.97	
2717.71				805.14-	DEC 1 1924					2717.71	
2546.20				4.00000-	DEC 2 1924					2546.20	
2301.68				583.214-	DEC 2 1924					2301.68	
2701.68				227.71-	DEC 2 1924					2701.68	
2577.33				1000.00-	DEC 2 1924					2577.33	
4100.07				20236-	DEC 2 1924					4100.07	
1934.98				250.00-	DEC 2 1924					1934.98	
873.25				1.00000-	DEC 2 1924					873.25	
5478.0				765.9-	DEC 2 1924					5478.0	
522.9				150.00-	DEC 2 1924					522.9	
4922.5				1058-	DEC 2 1924					4922.5	
11427.57				4000.00-	DEC 2 1924					11427.57	
14160.77				583.214-	DEC 2 1924					14160.77	
1521.17				227.71-	DEC 2 1924					1521.17	
2640.17				1000.00-	DEC 2 1924					2640.17	
10028.57				20236-	DEC 2 1924					10028.57	
6848.67				250.00-	DEC 2 1924					6848.67	
3606.3				1.00000-	DEC 2 1924					3606.3	
3156.23				765.9-	DEC 2 1924					3156.23	
1750.07				150.00-	DEC 2 1924					1750.07	
1750.07				1058-	DEC 2 1924					1750.07	
1470.15				4000.00-	DEC 2 1924					1470.15	
1298.13				583.214-	DEC 2 1924					1298.13	
175.15				227.71-	DEC 2 1924					175.15	
12510.15				1000.00-	DEC 2 1924					12510.15	
11546.71				20236-	DEC 2 1924					11546.71	
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						
				1058-	DEC 2 1924						
				4000.00-	DEC 2 1924						
				583.214-	DEC 2 1924						
				227.71-	DEC 2 1924						
				1000.00-	DEC 2 1924						
				20236-	DEC 2 1924						
				250.00-	DEC 2 1924						
				1.00000-	DEC 2 1924						
				765.9-	DEC 2 1924						
				150.00-	DEC 2 1924						

Exhibit VJ-1.

N. J. MORTGAGE—INT., INS. TAX & ASS'T.—CONDITION PRINTED—149

THE CHISHOLM STATIONERY CO., 63 CLIFF ST., N. Y.

This Indenture,

Made the 11th day of January in the year of our Lord One
Thousand Nine Hundred and twenty-four.

Between

Gastano Di Napoli and Antonietta Di Napoli, his wife,
(also known as Antonietta)

of the City of Hackensack in the County of
Bergen and State of New Jersey party of the first part;

And

Noe Parciasepe

of the City of Paterson in the County of
Passaic and State of New Jersey party of the second part;

~~Whereas, the said~~

Parties of the First Part are justly indebted to
the said party of the second part, in the sum of

fifteen hundred (1500) Dollars,

lawful money of the United States of America, secured to be paid by their certain bond or

obligation, bearing even date with these presents, in the penal sum of
thirty hundred (3000) Dollars,

lawful money as aforesaid conditioned for the payment of the said first-mentioned sum of
fifteen hundred (1500) Dollars,

lawful money as aforesaid, to the said party of the second part, his executors,

administrators or assigns on the 11th day of January

which will be in the year One Thousand Nine Hundred and twenty-five and interest

thereon, to be computed from date hereof at and

after the rate of six per cent. per annum, and to be paid

semi-annually.

And it is thereby expressly agreed that should any default be made in the payment
of the said interest or of any part thereof, on any day
whereon the same is made payable, as above expressed, or should any tax, assessment, water rent
or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or
acquired upon the premises described in this mortgage, and become due and payable, and should
the said interest or any part thereof remain unpaid
and in arrear for the space of thirty days, or said tax, assessment, water rent
or other municipal or governmental rate, charge, imposition or lien, or any or either of them
remain unpaid and in arrear for the space of sixty days then and from
thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case
may be, the aforesaid principal sum of
fifteen hundred (1500) dollars,

with all arrearage of interest thereon, shall, at the option of the said party of the second part,
or his legal representatives, become and be due and payable immediately thereafter, although
the period above limited for the payment thereof may not then have expired, anything therein
before contained to the contrary thereof in anywise notwithstanding: as by the said bond or
obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now this Indenture Witnesseth, That the said party of the first part, for the
better securing the payment of the said sum of money mentioned in the condition of the said
bond or obligation, with interest thereon, according to the true intent and meaning thereof, and

Exhibit VJ-1.

also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever,

All that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hackensack in the County of Bergen and State of New Jersey, and

which on a certain map entitled "Map of property of Matthew Andronico, Hackensack, N.J." and filed in the Bergen County Clerk's Office on Oct. 16, 1908 as Map No. 1167 being known and designated thereon as lots numbers one (1), two (2) and three (3) in block number one (1).

Excepting and reserving out of same all that lot, tract or parcel of land and premises heretofore conveyed by said Gaetano Di Napoli and wife to Fedele Toriello by deed bearing date the 26th day of Oct. 1913 and recorded in the Bergen County Clerk's Office in book 865 of deeds, page 364.

Beginning at a point in northwesterly corner of lands of party of first part (Gaetano Di Napoli) which point is also the southwesterly corner of land of party of second part (Fedele Toriello) which is distant southerly from southerly side of Broadway one hundred forty-three and fiftyfour hundredths (143.54) feet, thence running (1) easterly and along lands of said party of second part fifty (50) feet more or less to southeasterly corner of lands of party of second part which is also the northeasterly corner of lands of party of first part; thence (2) southerly and along the division line between lots numbers one (1) and two (2) as laid out on a map entitled Map of property of Matthew Andronico, Hackensack, N.J." fifteen and forty-five hundredths (15.45) feet to a point; thence (3) westerly fifty (50) feet to a point in easterly line of lands of Board of Education of Township of New Barbadoes; thence (4) northerly and along said lands of Board of Education fourteen and eighty-one hundredths (14.81) feet to point or place of beginning.

30
Exhibit VJ-1.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever.

Provided always, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said Parties of the First Part for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

And it is also agreed, by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

And the said Parties of the First Part the owners of the lands above described for themselves, their heirs and assigns, do further covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that they will pay in full, all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto.

In Witness Whereof, the said party of the first part ha^ve hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered }
in the Presence of }

M. Amos Lacey

Eustachio Napoli
Antonivilla Di Napoli



Exhibit VJ-1.

N. J. BOND-INT., TAX & ASS'T.—CONDITION PRINTED—146.

THE CHISHOLM STATIONERY COMPANY, 61-65 CLIFF ST., N. Y.

Know all Men by these Presents:

That Gaetano Di Napoli and Antonietta Di Napoli, his wife, are

held and firmly bound unto

Noe Parciasepe

in the penal sum of
thirty hundred (3000) dollars
lawful money of the United States of America, to be paid to the said

Noe Parciasepe

his executors, administrators or assigns: For which payment well and truly to be made, they bind themselves, their heirs, executors and administrators, firmly by these presents. Sealed with their seal. Dated the 11th day of January One Thousand Nine Hundred and twenty-four.

The Condition of the above obligation is such that if the above bounden

Gaetano Di Napoli and Antonietta Di Napoli, his wife, their heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named

Noe Parciasepe, his

executors, administrators or assigns, the just and full sum of

fifteen hundred (1500) dollars

on the 11th day of January which will be in the year

One Thousand Nine Hundred and twenty-five, and the interest thereon, to be computed

from date hereof at and after the

rate of Six per cent. per annum, and to be paid semi-annually

without any fraud or other delay, then the above Obligation to be Void, otherwise to remain in full force and virtue.

Exhibit VJ-1.

And it is hereby expressly agreed, that should any default be made in the payment of the said interest,

or of any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest

or any part thereof remain unpaid and in arrear for the space of

thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of sixty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of

fifteen hundred (1500)

dollars



with all arrearage of interest thereon, shall, at the option of the said

Noè Parciasepe

or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Signed, Sealed and Delivered }
In the Presence of }

H. J. [unclear]

Antonio [unclear] 
Antonio [unclear] 

STAMP
50 CENTS

STAMP
25 CENTS

Exhibit VJ-1.

State of New Jersey, } ss:
County of Bergen

Be it Remembered, That on this 11th day of January in the year of our Lord One Thousand Nine Hundred and twenty-four, before me, the subscriber;

A Master in Chancery of N.J.

personally appeared

Gaetano Di Napoli and Antonietta Di Napoli, his wife, (also known as Antonietta)

who, I am satisfied, are the mortgagor mentioned in the within Instrument to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said

W. F. Sansone
MC C of N J

~~being by me personally examined, separate and apart from said husband, further acknowledged that signed, sealed and delivered the same as voluntary act and deed, FREELY, without any fear, threats or compulsion of said husband~~

3206 A

Mortgage.

GAETANO DI NAPOLI and ANTONIETTA DI NAPOLI, his wife

131019 TO
NOE P. ANGLASEE
RECORDING FEE \$ 17.75
PAID

Dated, Jan. 11, 1924

Recorded in the Clerk's Office of the County of Bergen NJ on the 12th day of January A. D. 1924 at 10:19 o'clock, in the fore noon and returned to the Book 646 of MORTGAGES for said County, on page 214 &c

W. F. Sansone
County Clerk

INDEXED

LAW OFFICES
EULOMENO SANSONE
75 MAIN STREET
HACKENSACK, N. J.

78

The undersigned has been fully and satisfactorily and the Clerk of the County of Bergen in his capacity as such cannot do so.

Noe P. Anglasee

REC'D IN REGISTRY DIVISION
CLERK'S OFFICE
JAN 12 1924

JAN 12 1924

3206-A

W. F. Sansone

Exhibit VJ-2.

DI NAPOLI & SON
18 LODI ST.

No. 195

JAN 17 1925

Hackensack, N. J.

January 15 1925

\$ 500.00

Pay to the order of

Salvatore Paiese

Five Hundred Dollars

The City National Bank
Hackensack, N. J.

INCORPORATED IN NEW JERSEY

SAFE DEPOSIT VAULTS

CITY NATIONAL BANK

55-217

THE CITY NATIONAL BANK

166

167

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Salvatore Paiese

Mr. J. J.

THE HACKENSACK TRUST CO.

55-215

HACKENSACK, N. J.

JAN 16 1925

TRUST BANKER OR

ANY BANK

PAY TO THE ORDER OF

New Jersey Court of Errors and Appeals

THE CITY NATIONAL BANK of Hack-
ensack, New Jersey, a National
Banking Corporation of the
United States of America,

Complainant-Appellee,

vs.

ANTONETTA DiNAPOLI,

Defendant-Appellant.

On Appeal
from Court of
Chancery.

BRIEF FOR DEFENDANT-APPELLANT.

Statement of Facts.

**The complainant-appellee filed a bill to fore-
close a mortgage.**

The defendant-appellant is an Italian who gave her testimony through an interpreter (Case, p. 27). She was the owner of property in the City of Hackensack, County of Bergen and State of New Jersey, and had owned said property for nine or ten years (Case, p. 28). The property was purchased with the husband's money and placed in the defendant-appellant's name nine or ten years before the giving of the mortgage in question. On September 10th, 1924 a bond and mortgage were executed by Antonetta DiNapoli, the defendant-appellant, and Gaetano DiNapoli, her husband, to Charles Rosenberg, trustee, in the amount of \$6,000. Mrs. DiNapoli does not understand English and only knows how to write her name (Case, p. 30). When Mr. and Mrs. DiNapoli went to the

office of Charles Rosenberg, when the mortgage was executed, Mrs. DiNapoli stated her husband told her to come along with him and they went to Mr. Rosenberg's office and they made her sit down and write her name twice.

At the time that the bond and mortgage were executed no money was advanced to Mrs. DiNapoli (Case, p. 20) nor at any other time (Case, p. 21). The money was to be advanced to Mr. DiNapoli after the execution of the mortgage (Case, p. 21) and subsequently money was advanced to Mr. DiNapoli on the note of DiNapoli & Son, a partnership. Mrs. DiNapoli was no part of that partnership. The mortgage recites "Whereas, the said Antonetta DiNapoli and Gaetano DiNapoli, her husband are justly indebted to the said party of the second part in the sum of Six Thousand (\$6,000) Dollars etc." (Case, p. 38 Exhibit C-1). This recital is not true. The bond and mortgage in question were taken by Charles Rosenberg as Trustee for the complainant-appellee.

Part of the money borrowed from the Bank by Mr. DiNapoli, after the execution of the bond and mortgage, was used by him to pay off a second mortgage of \$1500.00 which was a lien against the property of Mrs. DiNapoli.

POINT I.

The defendant-appellant received no benefit to her separate estate from the execution of the bond and mortgage. Said bond and mortgage was signed by her as surety for moneys to be subsequently advanced to her husband.

The bond and mortgage in question recited:

"Whereas the said Antonetta DiNapoli and Gaetano DiNapoli, her husband, are justly indebted to the said party of the second part in

the sum of Six Thousand (\$6,000) Dollars lawful money of the United States of America, secured to be paid by their certain Bond or obligation bearing even date, &c."

The defendant by her answer denies that she was indebted to the complainant or its Trustee, and avers that the Bond and Mortgage were executed by her under the coercion of her husband and on the misrepresentation of the complainant and its representatives, and that she never received any benefit from the execution of the bond and mortgage, and that no moneys were advanced upon the bond and that the Bond and Mortgage were merely purported to be collateral security to loans made to her husband in connection with his individual business.

It would seem that this case comes clearly within the rule laid down in the case of *Bliss v. Cronk*, 62 N. J. Eq., 496.

In that case Vice Chancellor Pitney says:

"The true aspect of the case from complainant's standpoint is that the wife became the surety of the husband for the amount mentioned.

For that purpose the covenant is entirely void both under our statute and before its enactment under the ruling of the Court of Errors and Appeals in *Perkins vs. Elliott*, 8 C. E. Green, 526.

Nevertheless it is quite clear that a married woman may convey her land by way of mortgage to secure her husband's debt. *Campbell vs. Tompkins*, 5 Stew. Eq. S. C. On Appeal, 6 Stew. Eq., 362; *Merchant v. Thompson*, 7 Stew. Eq., 73.

It follows that if the mortgage had recited the debt from the husband to the complainants, instead of only from the wife, which did not exist, an entirely different question would have arisen. But not only does the mortgage contain no such recital, but it does not appear

that the wife knew or had any reason to believe that any such indebtedness existed or that she was giving the mortgage to secure her husband's debt; but the contrary appears affirmatively.

Further, no question arises of estoppel in favor of third parties who have given credit to the firm on the strength of finding this mortgage among its assets."

The Vice Chancellor further in the opinion at Page 501, says:

"Now I think it is entirely competent for the wife to show that she did not conscientiously give it for any such purpose and I think this is so even if the burden does not rest on the complainants as I think it does, to show affirmatively that it was so given; hence it seems to me that the circumstances under which it was given are clearly competent and I think if any fraud was practiced upon or misrepresentations made to Mrs. Cronk which induced her to execute the instrument, the complainants must take it subject to any defense which arises out of such misrepresentations."

And further, he says:

"But independent of that principle, I think it was the duty of the complainants, under the circumstances of this cause to see to it that the wife executed this mortgage with a full understanding of the effect of so doing."

It would also appear that at the time of the execution of the bond and mortgage, the husband was not indebted to the complainants and that consequently there was no debt of the husband at that time. Therefore, the contract was not only for the payment of the husband's debts but a contract of guarantee or suretyship for debts which the husband might thereafter incur in connection with his own individual business.

POINT II.

The gift of the husband to the defendant-appellant of fifteen hundred dollars (\$1500.00) from moneys borrowed subsequent to the execution of the mortgage did not change the nature of the transaction.

At the time that the bond and mortgage were executed, although the bond and mortgage improperly recited a debt from Mr. and Mrs. DiNapoli to the Trustee, there was nothing due to the Trustee nor was ever anything advanced on the bond which was given to secure the mortgage. After the execution of the bond and mortgage from time to time a partnership trading under the name of DiNapoli & Son, which did not include Mrs. DiNapoli, borrowed money from the City National Bank upon its promissory notes. It appears from the record that the husband, without the knowledge of this defendant, paid off a second mortgage of \$1500.00 which was a lien upon the property of Mrs. DiNapoli out of money which he borrowed from the City National Bank upon the partnership note. This gift could in no way change the nature of the transaction so far as Mrs. DiNapoli was concerned as at the time of the execution of the bond and mortgage there was no debt due by Mrs. DiNapoli or the partnership to the Trustee or the City National Bank, and the transaction was entirely one of suretyship on behalf of Mrs. DiNapoli for moneys which might be advanced in the future to her husband or his partnership.

This case does not come within the line of cases which hold that a wife may give a mortgage upon her property to pay her husband's debts. In this case there was no debt that could be paid at the time of the execution of the mortgage and the contract was entirely executory and was not an exe-

cuted contract at the date of the delivery of the bond and mortgage. It was a pure case of guarantyship or suretyship, to wit, that if the notes given by DiNapoli & Son to the City National Bank upon which the money was advanced were not paid that the moneys might be made out of the bond and mortgage, but in case the notes were paid by DiNapoli & Son the transaction shows on its face that the bond and mortgage would be delivered up for cancellation. DiNapoli & Son were the principals to whom the credit was extended upon the notes. Mrs. DiNapoli was the surety.

POINT III.

It is respectfully submitted that the decree in this cause should be set aside and for nothing holden and the bill of complaint be dismissed.

Respectfully submitted,

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys of Defendant-Appellant.

LE ROY VANDER BURGH,
Of Counsel.

New Jersey Court of Errors and Appeals

THE CITY NATIONAL BANK OF
HACKENSACK, NEW JERSEY, A
NATIONAL BANKING CORPORATION
OF THE UNITED STATES OF AMER-
ICA,

Complainant-Appellee,

and

ANTONETTA DI NAPOLI (widow),
Defendant-Appellant.

On Appeal
from the
Court of
Chancery.
Brief of
Complainant-
Appellee.

FACTS

Complainant-appellee respectfully submits that the facts in this case merit an affirmation of the decree entered in the Court of Chancery. Those facts are as follows:

1. The Bond (C-2) bearing date September 10, 1924, which is the same date as the original note executed by Di Napoli & Son to the complainant-appellee, sets forth an obligation on the part of Gaetano Di Napoli, defendant-appellant's husband, to pay the complainant-appellee \$6,000 on December 10th, 1924.

2. The mortgage (C-1) which is the subject of the foreclosure suit in the court below refers to the indebtedness of Gaetano Di Napoli, defendant-appellant's husband, as described in the bond—it recites the execution of the bond and is in every sense of the word a passing over of defendant-appellant's property for the purpose of paying her husband's indebtedness. The contract was an executed one which the mortgage was given to secure.

3. The execution of the mortgage by the defendant-appellant was in no sense of the word obtained through fraud or duress or with less than a full understanding of what she was doing. It was executed and acknowledged at the place the husband received the money from complainant-appellee—the husband was present and a separate acknowledgment was also obtained. (See Case, pages 20, 21, 31, 32 and 33.) Defendant knew what she was doing and acquiesced in it and now seeks to show fraud.

4. A portion of the money received from the complainant-appellee actually was used to pay off a mortgage upon defendant-appellant's premises described in this mortgage. This mortgage was paid just prior to the death of defendant-appellant's husband early in 1925 but was never cancelled of record. Both defendant-appellant and her son denied at the first hearing of the case on May 11th, 1926, before Vice-Chancellor Lewis any knowledge of such a use being made of the proceeds of the loan. On page 27 of the Case we read in the cross-examination of James Di Napoli, defendant-appellant's son and a member of her husband's partnership:

“Q. And after that time (the date of the execution of the mortgage), what did you do; did you borrow any money from the bank?

A. Yes, sir, from time to time as we needed it—on notes—

Q. Did any of that money go to your mother?

A. No, sir.

Q. Did she have any interest in the partnership?

A. No, sir.

Q. The proceeds of these notes which I am showing you, marked ‘Exhibits C3, C4, C5,’ to whom did that money go?

A. Di Napoli & Son got it.

CROSS-EXAMINATION BY MR. VANDERWART:

Q. Do you know how much was due on the other mortgages upon Mrs. Di Napoli’s property at the time this \$6,000 was received from the bank?

MR. WRIGHT: Objected to as immaterial and irrelevant.

THE COURT: Objection overruled.

Q. Do you know?

A. No, sir.

Q. Don't you know, as a matter of fact, that a portion of the money received from the bank when this mortgage was foreclosed, went to pay the second mortgagee, a man named Parciasepe; do you know that?

A. No, sir."

And on page 30 of the Case we read in the cross-examination of defendant-appellant:

"Q. Who holds the second mortgage on the property?

A. I don't know.

Q. You don't know the amount of it?

A. I think it is \$2,000.

Q. Don't you know, Mrs. Di Napoli, as a matter of fact, that a part of the money which was obtained at the City National Bank when you signed this mortgage, went to pay off the second mortgage on the house, or a part of it?

A. I don't know anything about money from the bank; I did not go to any bank.

Q. Didn't you sign this mortgage at the bank?

A. No mortgage; they made me put my name down and sign, but I did not know what it was."

On September 22, 1926, additional testimony was introduced to prove that a portion of the proceeds of the loan to defendant-appellant went into her premises and paid off a mortgage. This testimony on pages 35, 36 and 37 of the Case throws doubt on all of the defendant-appellant's other testimony as well.

It is apparent that defendant-appellant received part of the consideration which this mortgage was given to secure and that defendant-appellant and her son were seeking to conceal this fact from the Court—the husband is dead!

5. There is evidence in the case that the property which is the subject of the mortgage, and now owned by the defendant-appellant, was formerly owned by the husband, and also that the house upon the premises was paid for by him. Case page 29.)

While, therefore, it is not alleged in the bill, it really was the husband's property which was being mortgaged and not the property of the defendant-appellant.

POINT 1.

It has been suggested that the case of Bliss vs. Cronk, 62 Equity 496, is applicable to the facts in this case, but it is to be noted that the Cronk case differs in a number of particulars:

FIRST: The bond in the Cronk case did not contain any recital of indebtedness of the husband which the mortgage was given to secure—it recited only the fact that Amelia Cronk was indebted to the mortgagee. *No separate obligation was given.*

SECOND: The mortgage was given to a partnership to which Mr. Cronk, one of the partners, and the husband of the mortgagor, was indebted. No moneys were advanced at the time of execution and it was to be cancelled when the indebtedness of the husband had been eliminated through the application of the profits of the concern to his account.

THIRD: The mortgagee never met the mortgagor excepting through the husband, who was one of the partners of the mortgagee.

FOURTH: There is evidence in the Cronk case of an actual fraud being practiced upon Mrs. Cronk when she executed the mortgage, viz.: that it was to be used by the firm for the purpose of making a show of assets for the mercantile agencies, and that it would never be a lien against the property.

In the case at Bar a separate obligation was given, which recited the husband's debt, and it is also submitted that this mortgage was executed

by both husband and wife. Furthermore, the husband actually received the amount named in the bond from the mortgagee in cash. The mortgage was executed in the presence of the mortgagee and there was no intention or effort made to conceal the nature of the instrument, nor was there any fraud practiced toward the mortgagor. *And most surely in the Cronk case there is no evidence at all that the wife's property ever received any benefit at all from the mortgagee's money, nor that the property was ever paid for by Mr. Cronk.*

The Court in the Cronk case 62 Equity 500 distinctly says:

“It is quite clear that a married woman may convey her land by way of mortgage to secure her husband's debt.”

And

“It follows that if the mortgage had recited a debt from the husband to the complainants, instead of one from the wife, which did not exist, an entirely different question would have arisen.”

The mortgagor defendant in the case at Bar had plenty of reason to believe that such an indebtedness existed for the very papers that she signed and the explanation which was given to her mentioned such an indebtedness and the exact nature of the transaction she was assuming.

In 62 Equity 500 above referred to we read:

“The result of the evidence is that from complainants’ standpoint is it quite consistent with justice and equity that the mortgage should be enforced. But this does not include the whole case. On the contrary, from the defendant’s standpoint, it is equally clear that it should not be enforced.”

The Court then goes on and attacks the mortgage in that it contains a false recital and the circumstances under which it was given, and then it goes on to emphasize the false representations made at the time of its execution, that she did not know that she was making a mortgage, and finally that nothing was advanced on the strength of it.

In all of these particulars our facts are not in accordance with the facts in Bliss vs. Cronk, so that the views of the Court in the Cronk case cannot be applicable to the case at Bar.

As the Court finally said:

“The (Cronk) mortgage was made for a temporary purpose and, in effect, as a loan, without any expectation that it was to be enforced.”

POINT 2.

A married woman may mortgage her property to secure the payment of her husband's indebtedness.

We believe the following cases have been instrumental in settling the law in this State upon this point.

44 EQUITY 93. LOMERSON vs. JOHNSON.

Passes upon the question of fraud or duress in the execution of a bond and mortgage to secure the indebtedness of a husband. Reviews the cases down to that time and is authority for the proposition that if statements made created fear or just apprehension the reasonable conclusion is that the free agency of the wife was overcome. There must be some undue pressure.

43 EQUITY 179. WARWICK vs. LAWRENCE.

If a married woman consents to the application of her money to the payment of the debts of her husband, or those of any other person, she cannot reclaim such moneys. Her executory contracts of such a nature cannot be enforced but she cannot rescind the transaction after its execution.

We see nothing in the statute, nor in the general principles of jurisprudence, that appears to indicate the existence of a power so

unnecessary for the reasonable protection of the married woman, and which would be so liable to abuse. A married woman cannot bind herself to pay the debts of another, but she can pass over her money or property for that purpose, and it cannot reasonably be contended that after the doing of that act she can at will avoid it. *In the present instance, Mrs. Lawrence, the complainant, could at any time before the receipt of these moneys by Warwick have revoked his authority, on the basis of its not being binding upon her as long as it was executory; but by permitting it to remain in full force until after the collection had been made and the funds applied to the payment of the debts of her husband, such payments became her payments, and she cannot now repudiate them.*

17 EQUITY 394. GALWAY vs. FULLERTON.

The objection that the wife's property must be protected in equity from the debts of her husband, is answered by saying that it is so protected, until she does, by her voluntary act, free from the threats or compulsion of her husband, make it so liable, by the execution of a deed or mortgage; and when she executes a mortgage, and acknowledges it in conformity with the statute, and the husband consents to the execution by joining in the mortgage, it becomes a valid security, and will be enforced both at law and in equity.

82 N. J. LAW 92. DAVIDSON vs. BIDDLEMAN.

If a married woman agrees, if credit is given her husband she will mortgage her lands to secure the payment of it, and the credit is given, and a mortgage executed although for a larger sum, and the difference between the husband's debt and the amount of the mortgage is paid to the wife, she cannot recover the sum retained in pursuance of her agreement, upon the ground that so much of the consideration of the mortgage as equals the husband's debt is due and unpaid.

109 ATLANTIC 361. McMERTY vs. BOWERS.

A married woman may mortgage or pledge her property to secure the debt of her husband or any other person.

34 EQUITY 73. MERCHANT vs. THOMPSON.

A married woman may, with her husband, mortgage her own lands to secure the payment of his debts or those of any other person, for the payment of which she is in no way liable.

103 ATLANTIC 381. LIEBER vs. AMERICAN NATIONAL BANK.

As was said by the Court of Errors and Appeals in Warwick vs. Lawrence, 43 N. J. Eq. 179, 184; 10 Atlantic 376, 377 (3 Am. St. Rep. 299):

Although "a married woman cannot bind herself to pay the debts of another, but she can pass over her money or property for that purpose, and it cannot reasonably be contended that after the doing of that act she can at will avoid it."

In other words, that while executory contracts of suretyship are not enforceable against married women, executed contracts cannot be rescinded by them. To the same effect is *Shipment vs. Lord*, 58 N. J. Eq. 380; 44 Atl. 215; in which it was held that an assignment of her property made by a married woman to secure another's debt, being an executed contract of suretyship, cannot be rescinded by her.

The case of *Colonial Building and Loan Association vs. Griffin*, a recent case in this State, 85 N. J. Eq. 457, is founded upon a state of facts much more nearly in point with the facts in this cause than those in the *Cronk* case. In the *Colonial Building and Loan Association* case, *supra*, the wife had joined with the husband in the execution of certain notes which the mortgage on the wife's separate property was given to secure. The Court of Chancery held that the notes were void by reason of the Married Woman's Act but that the mortgage was valid and said:

"These assumptions, however, are erroneous in this, that while the contract contained in the notes, being purely executory (if within the statute) cannot be enforced, the conveyance by the mortgage, being executed, if given to secure the husband's debt, is good, and her

title in equity can be *foreclosed.*" (Citing cases.)

The case of Bliss vs. Cronk, *supra*, is not contrary to the views above expressed, as the wife here fully comprehended the transaction. She gave her notes, assuming them to be valid, and executed her mortgage to secure the payment of the moneys mentioned in the notes, which really constituted the debt of her husband. Now, after the mortgagee has parted with the title and possession of the property sold to the husband on the faith of the security delivered, the wife has discovered that the notes are void, and now seeks to avoid her mortgage on the ground that the notes, being void, the mortgage is likewise. A court of equity in such case will look at the substance and give effect to the admitted intentions of the parties, rather than follow the erroneous form adopted for carrying them into effect, which might lead to injustice, especially where there is no fraud or conduct which might move a court of equity to refuse its aid, and where the rights of innocent parties are not affected.

It is respectfully submitted because of the facts and the well-settled law of this State the mortgage should be upheld and the decree to foreclose it should be affirmed by this Honorable Court.

HART & VANDERWART,
Attorneys for Complainant-Appellee.

HERMAN VANDERWART,
Of Counsel.

