INDEX

TESTIMONY.

For Plaintiff.

For Defendant.

EXHIBITS.

NOTICE AND GROUNDS OF APPEAL.

Filed March 10, 1931.

New Jersey Supreme Court

FIDELITY UNION TRUST COMPANY, a corporation of New Jersey, *Plaintiff,* *vs.* OLA E. GALM, *Defendant.*	*Action at Law.* *Notice and Grounds of Appeal.*

To the plaintiff or Hood, Lafferty & Campbell, its attorneys:

TAKE NOTICE that the defendant hereby appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. The first defense in the answer was erroneously struck out.

2. The second defense in the answer was erroneously struck out.

3. The third defense in the answer was erroneously overruled.

4. The fourth defense in the answer was erroneously overruled.

5. The following question was erroneously overruled: To the witness Elmer W. Boan: "Did you ever notify Mrs. Galm after this was signed that you were extending credit to her husband?"

6. The following question was erroneously overruled: To the witness Elmer W. Boan: "Mr. Boan, at the time when you were there with Mrs. Galm, and this was signed, was anything paid to Mrs. Galm?"

7. The following question was erroneously overruled: To the witness Elmer W. Boan: "Mr. Boan, did you get any financial statement from Mrs. Galm at the time this was signed?"

8. The following question was erroneously overruled: To the witness Charles W. Holweg: "Did you get any statement from Mrs. Galm?"

CORN & SILVERMAN,
Attorneys of Defendant-Appellant.

Service of the within Notice and Grounds of Appeal is hereby acknowledged this 9th day of March, 1931.

HOOD, LAFFERTY & CAMPBELL,
Attorneys of Plaintiff.

COMPLAINT.

Filed May 23, 1929.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

FIDELITY UNION TRUST COMPANY, *Plaintiff,* *vs.* OLA E. GALM, *Defendant.*	*Action at Law.* *Complaint.*

The plaintiff, Fidelity Union Trust Company, a corporation of New Jersey, with its principal place of business in the City of Newark, County of Essex and State of New Jersey, says that:

1. On December 19, 1927 the defendant, Ola E. Galm, in consideration of one dollar and of an extension and continuation of a line of credit by the plaintiff to one Adolph C. Galm, in writing, guaranteed to the plaintiff, its successors or assigns, payment at maturity of the bills, notes, checks or other evidences of debt not exceeding $20,000 either made or endorsed by said Adolph C. Galm, already discounted or which might thereafter be discounted by the plaintiff, for the said Adolph C. Galm, together with all legal or other expenses of collections as more particularly appears by said written agreement, a true copy which is hereunto annexed and marked Plaintiff's Exhibit A and specifically made a part hereof.

2. The defendant further agreed that she would waive demand of payment and notice of protest.

3. In reliance upon defendant's promises, the plaintiff extended to the said Adolph C. Galm a line of credit and more specifically discounted certain notes made or endorsed by the said Adolph C. Galm as follows:

Note dated December 11, 1928 in the sum of $500, made and endorsed by said Adolph C. Galm, payable three months after date to his order.

Note dated November 5, 1928, in the sum of $1,000, made and endorsed by said Adolph C. Galm, payable three months after date to his order.

Note dated September 17, 1928 in the sum of $15,500, made and endorsed by said Adolph C. Galm, payable three months after date to his order.

Note dated December 5, 1928 in the sum of $1,000, made and endorsed by said Adolph C. Galm, payable one month after date to his order.

Note dated December 3, 1928 in the sum of $300, made and endorsed by said Adolph C. Galm, payable one month after date to his order.

Note dated October 17, 1928 in the sum of $2,500, made and endorsed by said Adolph C. Galm, payable four months after date to his order.

Note dated December 17, 1928 in the sum of $1,200, made by A. C. Galm, Inc., payable one month after date to its order and endorsed by said A. C. Galm, Inc., and by said Adolph C. Galm.

Note dated September 20, 1928 in the sum of $8,800, made by A. C. Galm, Inc., payable four months after date to its order and endorsed by said A. C. Galm, Inc., and by said Adolph C. Galm.

Note dated September 27, 1928 in the sum of $2,500, made by Adolph C. Galm, Inc., payable four months after date to its order and endorsed by said Adolph C. Galm, Inc., and by said Adolph C. Galm.

4. All of said notes were presented for payment on the dates of their respective maturities and none was paid. Notice of dishonor was duly given.

5. None of said notes nor any part thereof was paid and there is due and owing to the plaintiff the aggregate principal sum of $33,300 together with protest fees of $19.44 and interest from the dates of the respective maturities of said notes. Plaintiff now holds said notes.

6. Plaintiff has fully performed all undertakings on its part to be performed, but, although said notes became due and payable as above set forth and all of the same have remained unpaid, defendant, although often requested, has not paid the plaintiff said sum of $20,000 on account of same nor any part thereof, and thereby failed to perform the undertakings agreed on her part.

Plaintiff claims as damages the sum of $20,000, with interest on $15,500 from December 17, 1928; on $300 from January 3, 1929; on $1,000 from January 5, 1929; on $1,200 from January 17, 1929, and on $2,000 from January 20, 1929, to-

gether with all legal and other expenses of collection.

HOOD, LAFFERTY & CAMPBELL,
Attorneys for Plaintiff.

EXHIBIT "A."

Newark, N. J. Dec. 19, 1927.

For and in consideration of the sum of One Dollar to me in hand paid by Fidelity Union Trust Company, Citizens Branch of Newark, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I hereby guarantee to said Bank, its successor, successors or assigns, payment at maturity of the bills, notes, checks, or other evidences of debt, not exceeding the sum of Twenty Thousand Dollars, either made or endorsed by Adolph C. Galm already discounted or which may hereafter be discounted by said Bank for the said Adolph C. Galm, together with all legal or other expenses of or for collection; demand of payment and notice of protest waived.

And I hereby declare this guaranty to be a continuing guaranty of the payment of such bills, notes, checks, or other evidences of debt, up to said sum of Twenty Thousand Dollars either made or endorsed by said Adolph C. Galm until revoked by me in writing and a copy of such revocation delivered to said Bank.

(Sgd.) OLA E. GALM

In the presence of:
(Sgd.) C. W. Holweg

Complaint.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

On the 19th day of Dec. in the year One Thousand Nine Hundred and twenty-seven before me personally came Ola E. Galm to me known and known to me to be the individual described in, and who executed the foregoing instrument and she duly acknowledge that she executed the same.

(Sgd.) ELMER W. BOAN
(SEAL) Notary Public of New Jersey.
My commission expires May 11, 1930.

ANSWER.

Filed June 5, 1929.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

FIDELITY UNION TRUST COMPANY, *Plaintiff,* *vs.* OLA E. GALM, *Defendant.*	*Action at Law.* *Answer.*

Defendant, Ola E. Galm, residing in the Borough of Red Bank, County of Monmouth and State of New Jersey, answering the complaint filed in this cause, says that:

1. She denies paragraph 1.

2. She denies paragraph 2.

3. As to the allegations in paragraph 3, she has not sufficient knowledge or information whereof to form a belief, except she denies "in reliance upon defendant's promises."

4. As to the allegations in paragraph 4, she has not sufficient knowledge or information whereof to form a belief, except she denies "notice of dishonor was duly given."

5. As to the allegations in paragraph 5, she has not sufficient knowledge or information whereof to form a belief.

Answer.

6. As to the allegations in paragraph 6, she has not sufficient knowledge or information whereof to form a belief, except she admits she has not paid plaintiff said sum of $20,000, and except she denies she "thereby failed to perform the undertakings agreed on her part."

FIRST DEFENSE.

1. On December 19, 1927 defendant was a married woman, she being then the lawful wife of Adolph C. Galm, and she living then with her said husband.

2. On December 19, 1927 plaintiff was a corporation, existing under and by virtue of the laws of the State of New Jersey.

3. By virtue thereof defendant's alleged contract of guaranty is void and unenforceable as against defendant.

SECOND DEFENSE.

1. None of the notes mentioned in paragraph 3 of the complaint were either made or endorsed by Adolph C. Galm on or before December 19, 1927.

2. Defendant's alleged guaranty agreement does not embrace said notes.

THIRD DEFENSE.

1. There was no consideration for the making by defendant of said alleged guaranty agreement.

Answer.

FOURTH DEFENSE.

1. Plaintiff did not notify defendant of its acceptance of said alleged agreement before discounting said notes.

OBJECTIONS IN POINT OF LAW.

Defendant hereby reserves the right to move to strike out the complaint on the ground that it does not disclose a good cause of action against defendant.

CORN & SILVERMAN,
Attorneys of Defendant.

NOTICE OF MOTION AND AFFIDAVITS.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

FIDELITY UNION TRUST COMPANY, *Plaintiff,* *vs.* OLA E. GALM, *Defendant.*	*Action at Law.* *Notice of Motion to Strike Out Answer.*

To Corn & Silverman, Esqs., attorneys for defendant, 790 Broad street, Newark, New Jersey:

PLEASE TAKE NOTICE that we shall apply to the Honorable William S. Gummere, Chief Justice of the Supreme Court, at the Court House in Newark, New Jersey, on the 15th day of June, Nineteen Hundred and Twenty-nine, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order to strike out the answer and the first, second, third and fourth separate defenses filed by the defendant on the ground that the allegations contained in the same are untrue in fact and are sham and frivolous; and for summary judgment, and shall support our action by affidavits, true copies of which are hereto annexed and herewith served upon you.

MOTION TO STRIKE OUT FIRST SEPARATE DEFENSE.

We shall also apply at the same time for an order to strike out the first separate defense of the answer on the ground that it does not constitute a legal defense to the plaintiff's cause of action, and is otherwise vague and uncertain and irrelevant.

MOTION TO STRIKE OUT SECOND SEPARATE DEFENSE.

Also to strike out the third separate defense on the ground that it does not constitute a legal defense to the plaintiff's cause of action.

MOTION TO STRIKE OUT FOURTH SEPARATE DEFENSE.

Also to strike out the fourth separate defense on the ground that it does not constitute a legal defense to the plaintiff's cause of action.

HOOD, LAFFERTY & CAMPBELL,
Attorneys for Plaintiff.

Affidavit of Charles W. Holweg.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

FIDELITY UNION TRUST COMPANY, *Plaintiff,* *vs.* OLA E. GALM, *Defendant.*	*Action at Law.* *On Application for Summary Judgment.* *Affidavit.*

STATE OF NEW JERSEY, COUNTY OF ESSEX. } ss.:

CHARLES W. HOLWEG, of the City of Newark, County of Essex and State of New Jersey, being duly sworn upon his oath says: I am assistant vice-president of the Fidelity Union Trust Company, the plaintiff in the above entitled cause, and am its duly authorized agent for the purpose of making this affidavit. I am also general manager of the Citizens Branch of the Fidelity Union Trust Company and have general charge of the books and records of said branch, and have personal knowledge of the allegations hereinafter alleged and set forth:

1. On December 19, 1927, the defendant Ola E. Galm, in consideration of one dollar, guaranteed to the plaintiff, Fidelity Union Trust Company, its successors and assigns, in writing, payment at maturity of the bills, notes and checks, or other evidences of debt, not exceeding twenty thousand dollars, either made or endorsed by one Adolph C. Galm, already discounted or which might thereafter be discounted by plaintiff for the said Adolph C. Galm, together with all legal

or other expenses and collections, as more particularly appears by said written agreement, a true copy of which is hereunto annexed.

2. The defendant further agreed therein that she would waive demand of payment and notice of protest.

3. The defendant executed said guaranty in my presence and I signed the same as a witness thereto.

4. Prior to the execution of said agreement, the Citizens Branch of the Fidelity Union Trust Company had been extending credit to the said Adolph C. Galm from time to time, and this agreement of guaranty was executed by defendant in consideration of the agreement of the plaintiff to continue to extend a line of credit to the said Adolph C. Galm and to increase the line of credit heretofore extended by the plaintiff.

5. In reliance upon the promise of the defendant and upon her agreement of guaranty, the plaintiff extended to said Adolph C. Galm a line of credit and more specifically discounted certain notes made or endorsed by the said Adolph C. Galm, true copies of which are hereunto annexed.

6. All of said notes were presented for payment on the dates of their respective maturities and none was paid, and notices of dishonor were duly given.

7. None of said notes, nor any part thereof, has been paid and there is due and owing to the plaintiff the aggregate principal sum of $33,300.00, together with protest fees of $19.44, and interest from the dates of the respective maturi-

ties of said notes. The plaintiff has always held and now does hold said notes.

8. Plaintiff has performed all undertakings on its part to be performed, but the defendant, although notified of the non-payment of the same, has not paid said sum of $20,000.00, nor has she paid any part thereof, to the plaintiff.

9. There is due and owing to the plaintiff from the defendant on account of said agreement of guaranty the sum of $20,000.00, with interest on $15,500.00 from December 17, 1928, on $300.00 from January 3, 1929, on $1,000.00 from January 5, 1929, on $1,200.00 from January 17, 1929, and on $2,000.00 from January 20, 1929, together with costs and expenses of this suit. I believe that there is no defense to this action.

(Sgd.) CHARLES W. HOLWEG.

Subscribed and sworn to before
me this 10th day of June,
1929.

(Sgd.) FREDERIC G. GRUNDY,
(SEAL) Notary Public of New Jersey.

Affidavit of Elmer W. Boan.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

FIDELITY UNION TRUST COMPANY, *Plaintiff,* *vs.* OLA E. GALM, *Defendant.*	*Action at Law.* *On Application for Summary Judgment.* *Affidavit.*

STATE OF NEW JERSEY, COUNTY OF ESSEX, } ss.:

ELMER W. BOAN, of the Town of Irvington, County of Essex and State of New Jersey, being duly sworn upon his oath says: I am assistant secretary and treasurer of the Fidelity Union Trust Company, the plaintiff in the above-entitled cause, and as such am its agent for the purpose of executing this affidavit, and have been prior and during the transactions hereinafter set forth and still am located in the Citizens Branch of the Fidelity Union Trust Company, and have personal knowledge of the allegations hereinafter alleged and set forth:

1. On December 19, 1927, the defendant, Ola E. Galm, in consideration of one dollar, guaranteed to the plaintiff, Fidelity Union Trust Company, its successors and assigns, in writing, payment at maturity of the bills, notes and checks, or other evidences of debt, not exceeding twenty thousand dollars, either made or endorsed by one Adolph C. Galm, already discounted or which might thereafter be discounted by plaintiff for the said Adolph C. Galm, together with all legal

or other expenses and collections, as more particularly appears by said written agreement, a true copy of which is hereunto annexed.

2. The defendant further agreed therein that she would waive demand of payment and notice of protest.

3. The defendant executed said guaranty in my presence and at that time she personally acknowledged to me that she executed the same and I, as a notary public, for her acknowledgment, executed said instrument.

4. Prior to the execution of said agreement, the Citizens Branch of the Fidelity Union Trust Company had been extending credit to the said Adolph C. Galm from time to time, and this agreement of guaranty was executed by defendant in consideration of the agreement of the plaintiff to continue to extend a line of credit to the said Adolph C. Galm and to increase the line of credit heretofore extended by the plaintiff.

5. In reliance upon the promise of the defendant and upon her agreement of guaranty, the plaintiff extended to said Adolph C. Galm a line of credit and more specifically discounted certain notes made or endorsed by the said Adolph C. Galm, true copies of which are hereunto annexed.

6. All of said notes were presented for payment on the dates of their respective maturities and none was paid, and notices of dishonor were duly given.

7. None of said notes, nor any part thereof, has been paid and there is due and owing to the plaintiff the aggregate principal sum of $33,300.00, together with protest fees of $19.44, and

interest from the dates of the respective maturities of said notes. The plaintiff has always held and now does hold said notes.

8. Plaintiff has performed all undertakings on its part to be performed, but the defendant, although notified of the non-payment of the same, has not paid said sum of $20,000.00, nor has she paid any part thereof, to the plaintiff.

9. There is due and owing to the plaintiff from the defendant on account of said agreement of guaranty the sum of $20,000.00, with interest on $15,500.00 from December 17, 1928, on $300.00 from January 3, 1929, on $1,000.00 from January 5, 1929, on $1,200.00 from January 17, 1929, and on $2,000.00 from January 20, 1929, together with costs and expenses of this suit. I believe that there is no defense to this action.

(Sgd.) ELMER W. BOAN.

Subscribed and sworn to before
me this 10th day of June,
1929.

(Sgd.) FREDERIC G. GRUNDY,
(SEAL) Notary Public of New Jersey.

Newark, N. J. Dec 19, 1927

For and in consideration of the sum of One Dollar to me in hand paid by Fidelity Union Trust Company, Citizens Branch of Newark, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I hereby guarantee to said Bank, its successor, successors or assigns, payment at maturity of the bills,

notes, checks, or other evidences of debt, not exceeding the sum of Twenty Thousand Dollars, either made or endorsed by Adolph C. Galm already discounted or which may hereafter be discounted by said Bank for the said Adolph C. Galm, together with all legal or other expenses of or for collection; demand of payment and notice of protest waived.

AND I hereby declare this guaranty to be a continuing guaranty of the payment of such bills, notes, checks, or other evidences of debt, up to said sum of Twenty Thousand Dollars either made or endorsed by said Adolph C. Galm until revoked by me in writing and a copy of such revocation delivered to said Bank.

OLA E. GALM.

In the presence of:
C. W. HOLWEG.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

On the 19th day of Dec in the year One Thousand Nine Hundred and twenty-seven before me personally came Ola E. Galm to me known and known to me to be the individual described in, and who executed the foregoing instrument and she duly acknowledge that she executed the same.

(SEAL) Notary Public of New Jersey.
ELMER W. BOAN,
Notary Public of New Jersey.
My commission expires May 11, 1920.

$500— Newark, N. J., Dec. 11, 1928 (6)

Three months after date, I promise to pay to the order of Myself Five hundred Dollars at the FIDELITY UNION TRUST COMPANY.

Citizens Branch.

Value received.

No..... Due Mch. 11.

ADOLPH C. GALM.

ENDORSEMENT—Adolph C. Galm.

$1,000.# Newark, N. J., Nov. 5, 1928 (6)

Three months after date, I promise to pay to the order of Myself One thousand Dollars at the FIDELITY UNION TRUST COMPANY.

Citizens Branch.

Value received.

No..... Due.....

ADOLPH C. GALM.

ENDORSEMENT—Adolph C. Galm.

$15,500 Newark, N. J., Sep. 17, 1928 (6)

Four months after date, I promise to pay to the order of Myself Fifteen thousand five hundred / 00 Dollars at the FIDELITY UNION TRUST COMPANY. Citizens Branch.

Value received.

No..... Due.....

ADOLPH C. GALM.

ENDORSEMENT—Adolph C. Galm.

$1,000.# Newark, N. J., Dec. 5, 1928 (6)

One month after date, I promise to pay to the order of Myself One thousand Dollars at the FIDELITY UNION TRUST COMPANY.

Citizens Branch.

Value received.

No..... Due.....

ADOLPH C. GALM.

ENDORSEMENT—Adolph C. Galm.

$300— Newark, N. J., Dec. 3—1928 (6)

One month after date, I promise to pay to the order of Myself Three hundred Dollars at the FIDELITY UNION TRUST COMPANY.

Citizens Branch.

Value received.

No..... Due.....

ADOLPH C. GALM.

ENDORSEMENT—Adolph C. Galm.

$2,500.00 Newark, N. J., Oct. 17/28 (6)

Four months after date, I promise to pay to the order of Myself Twenty-five hundred Dollars at the FIDELITY UNION TRUST COMPANY.

Citizens Branch.

Value received.

No..... Due.....

ADOLPH C. GALM.

ENDORSEMENT—Adolph C. Galm.

$1,200— Newark, N. J., Dec. 17, 1928 (6)

One month after date, we promise to pay to the order of Ourselves Twelve hundred /00 Dollars at the FIDELITY UNION TRUST COMPANY.

Citizens Branch.

Value received.

No..... Due.....

A. C. GALM, INC.,
A. C. Galm,
Pres.

ENDORSEMENTS—A. C. Galm, Inc.
A. C. Galm, Pres.
A. C. Galm.

$8,800.# Newark, N. J., Sept. 20, 1928 (6)

Four months after date, we promise to pay to the order of Ourselves Eighty-eight hundred Dollars at the FIDELITY UNION TRUST COMPANY.

Citizens Branch.

Value received.

No..... Due Jan. 21.

A. C. GALM, INC.,
Adolph C. Galm,
Pres.

ENDORSEMENTS—A. C. Galm, Inc.
Adolph C. Galm, Pres.
Adolph C. Galm.

$2,500— Newark, N. J., Nov. 27, 1928 (6)

Four months after date, I promise to pay to the order of Myself Twenty-five hundred / 00 Dollars at the Fidelity Union Trust Company.
Citizens Branch.

Value received.
No.....Due.....

Adolph C. Galm, Inc.

Endorsements—Adolph C. Galm, Inc.
Adolph C. Galm, Pres.
A. C. Galm.

ANSWERING AFFIDAVIT.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

FIDELITY UNION TRUST COMPANY, *Plaintiff,* vs. OLA E. GALM, *Defendant.*	*Action at Law.* *Affidavit.*

STATE OF NEW JERSEY, COUNTY OF ESSEX, } ss.:

I, Ola E. Galm, of full age, being duly sworn according to law on my oath, depose and say that:

1. I am the defendant in the above-entitled cause.

2. I did not, on December 19, 1927, or at any other time, guarantee to plaintiff, its successors or assigns, in writing or otherwise, payment at maturity of the bills, notes and/or other evidences of indebtednesses not exceeding Twenty Thousand Dollars ($20,000) or any other amount, either made or endorsed by my deceased husband, Adolph C. Galm, then already discounted or which might thereafter be discounted by plaintiff for said Adolph C. Galm.

3. I did not at any time execute such guarantee.

4. On December 19, 1927, I was, all day, at my home on Riverside avenue in the Borough

of Red Bank, Monmouth County, New Jersey, and did not, on that day see or speak to Charles W. Holweg or Elmer W. Boan, nor did I acknowledge to Elmer W. Boan or anyone else that I executed the alleged guarantee of which a copy is annexed to the complaint.

5. My said husband, Adolph C. Galm, died on January 14, 1929.

6. On December 19, 1927, plaintiff had discounted for my said husband notes to the total amount of over Twenty-four Thousand Dollars ($24,000) then unpaid. In addition plaintiff has discounted notes of A. C. Galm, Inc., a New Jersey corporation, in an amount which I cannot at this time state definitely.

7. From the complaint filed in this cause it now appears that plaintiff holds notes aggregating Twenty Thousand Eight Hundred Dollars ($20,800), made by my said husband.

8. The notes made by A. C. Galm, Inc., were not discounted by plaintiff for Adolph C. Galm but for said A. C. Galm, Inc.

9. Since on and after December 19, 1927, plaintiff did not increase the line of credit theretofore extended by it to said Adolph C. Galm but in fact decreased the same.

10. I never received notice of dishonor for any of the notes mentioned in the complaint.

11. I had no notice or knowledge of the existence of the alleged guarantee annexed to the complaint until on or about March 1, 1929.

12. I had no notice or knowledge of the existence or non-payment of any of the notes men-

tioned in the complaint until after my husband's death.

13. In November 1927, I applied to plaintiff for a loan in the sum of Five Thousand Dollars ($5,000) and the plaintiff refused to advance said sum unless I gave it a mortgage on my property, 802 Bergen street, Newark, N. J. Thereupon I and my husband executed said mortgage and the loan was passed. I renewed the note I gave to plaintiff for said Five Thousand Dollar ($5,000) loan and kept renewing the same until shortly after my husband's death. Thereupon I saw Mr. Charles W. Holweg, Assistant Vice-President of plaintiff, paid off the said note and had returned to me the said mortgage. Neither Mr. Holweg nor anyone else told me at that time or at any prior time that plaintiff held said alleged guarantee purporting to have been signed by me.

OLA E. GALM.

Sworn and subscribed to before
me this 12th day of June,
1929.

ROSE GREENE,
A Notary Public of New Jersey.

ORDER.

Filed June 22, 1929.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

FIDELITY UNION TRUST COMPANY, *Plaintiff,*	*Action at Law.*
vs.	*Order.*
OLA E. GALM, *Defendant.*	

This cause coming on to be heard in the presence of Hood, Lafferty & Campbell, attorneys of plaintiff, and Corn & Silverman, attorneys of defendant, upon motion of plaintiff to strike out defendant's answer and the First, Second, Third and Fourth Separate Defenses filed by the defendant, on the ground that the allegations contained in the same are untrue in fact and are sham and frivolous, and for summary judgment, and to strike out the First, Second and Fourth Separate Defenses on the ground that the same do not constitute legal defenses to plaintiff's cause of action, and upon hearing thereof and upon argument of counsel, and it appearing to the satisfaction of the Court that the First and Second Separate Defenses of defendant's answer are frivolous and that the defendant's answer and the defenses annexed thereto are not sham and that defendant's answer and the Third and Fourth Separate Defenses are not frivolous:

Order.

It is, on this 22nd day of June, 1929, ORDERED that the First and Second Separate Defenses contained in defendant's answer be and they are hereby struck out and the plaintiff's motion as to defendant's answer and the Third and Fourth Separate Defenses annexed to said answer be and the same are hereby denied.

(W. J. G.) Let this rule be entered in the minutes.

WM. J. GUMMERE,
Chief Justice.

Consented to as to form.

CORN & SILVERMAN,
Attorneys of Defendant.

REPLY.

Filed June 22, 1929.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

FIDELITY UNION TRUST COMPANY, *Plaintiff,* vs. OLA E. GALM, *Defendant.*	*Action at Law.* *Reply.*

Plaintiff denies the allegations of the third and fourth separate defenses.

HOOD, LAFFERTY & CAMPBELL,
Attorneys for Plaintiff.

JUDGMENT.

NEW JERSEY SUPREME COURT.

FIDELITY UNION TRUST COMPANY, *Plaintiff,*		*Action at Law.*
vs.		*On Postea.*
OLA E. GALM, *Defendant.*		

$22,336.42
73.03

$22,409.45

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of twenty-two thousand three hundred thirty-six dollars and forty-two cents, besides costs to be taxed *nisi.*

Entered December 24, 1930.

On motion of

HOOD, LAFFERTY & CAMPBELL,
Attorneys.

TESTIMONY.

SUPREME COURT.

ESSEX CIRCUIT.

Wednesday, December 17, 1930.

FIDELITY UNION TRUST COMPANY, *Plaintiff,* *vs.* OLA E. GALM, *Defendant.*	*Action at Law.*

Before Hon. Nelson Y. Dungan, Jr., and a jury.

For plaintiff appear Hood, Lafferty & Campbell (by Louis Hood and Wallace R. Chandler).

For defendant appear Corn & Silverman (by Joseph J. Corn).

(A jury is called and sworn.)

(At 4 o'clock P. M., an adjournment was taken until tomorrow, Thursday, December 18, 1930, at 10 A. M.)

SECOND DAY.

Thursday, December 18, 1930.

Continued pursuant to adjournment.

Present, counsel as before stated.

Mr. Chandler opens in behalf of plaintiff.

Mr. Corn opens in behalf of defendant.

ELMER W. BOAN, sworn in behalf of plaintiff.

Direct examination by Mr. Chandler.

Q Mr. Boan, by whom are you employed? A Fidelity Union Trust Company.

Q And at what branch are you located? A Citizens Branch.

Q How long have you been employed by the Fidelity Union Trust Company? A Twenty years.

Q And how long have you been in the Citizens Branch? A Since February, 1925.

Q Continuously? A Yes, sir.

Q Now, since February, 1925, what position or positions have you held? A I originally went there as paying teller, becoming note teller.

Q Can you tell approximately when you became note teller? A When I became note teller?

Q Yes. Do you remember? A About the middle of 1926.

Q Yes—and after that? A After I became note teller I was made assistant treasurer of the Citizens National Bank & Trust Company,

and then assistant secretary and treasurer of the Fidelity Union Trust Company.

Q All the time you were in the employ of the Fidelity? A Yes.

Q And about when did you become assistant secretary and treasurer of the Fidelity Union? A The middle of 1927.

Q Mr. Boan, did the Citizens ever have any credit relations with a certain Adolph C. Galm? A Yes.

Q And can you relate briefly what they were, back in 1927, starting about 1927? A He had a line of credit there with us in his personal name at that time, in 1927, which ran up into nineteen thousand some hundred dollars; and during the latter part of—that was 1927— through June, 1928, around June, 1928, we had extended further credit of $12,500 to A. C. Galm, Incorporated.

Q Now, in your relations with Mr. Galm did you ever have occasion to see his wife? A Yes; in November, 1927, while she was at the bank with Mr. Galm, when I negotiated a loan through the means of a mortgage.

Q And did you see her at any further time? A I wouldn't say that I did; no.

Q You recognize her when you see her, do you not? A Absolutely.

Q And now, did she come in to see you at any time in connection with signing any contract or agreement? A Yes; she signed an agreement on December 19, 1927.

Q Now, will you kindly relate what led up to the execution of that agreement? A Well, at that time I was the note teller.

Mr. Corn: At this time I ask the witness to be confined to anything said only when Mrs. Galm was there, and not a lot of hearsay.

The Court: Oh, yes.

The Witness: She was here on December 19, 1927, at the bank, to negotiate the agreement.

Q Well, prior to that, without telling what someone else said or heard, but from your own knowledge, can you relate the series of events which led up to her coming in there? A At the signing of this?

Q Yes. A Of the guaranty?

Q Yes. A Well, I know it had been talked over with Mr. Merz and Mr. Holweg.

Q Never mind what the talk was. Can you state what actually happened? A Well, I couldn't say just what happened there. That agreement there was between Mr. Holweg and Mr. Merz.

Q You have no personal knowledge of that yourself? A No.

Q You were not responsible for that? A No.

Q Now, on December 19, 1927, did you see the defendant Ola E. Galm? A I did.

Q And will you relate how you happened to see her? A Mr. and Mrs. Galm came into the bank and sat down at Mr. Holweg's desk. Mr. Holweg called for me to come out and bring my notary seal and stamp, which I did.

Q You were a notary at the time? A I was a notary at the time.

Q Then what happened? A He told me that Mrs. Galm was here to sign this guaranty for

$20,000, and I should take her affidavit. I asked her if she understood the contents of the agreement. She said that she did. She signed her name, and I notarized it with my seal.

Q Is she in court now? A She is.

Q Will you point her out? A Right over there (indicating).

Q That was the first time you saw Mrs. Galm? A No, I saw her about a month previous to that, when we negotiated this mortgage.

Q Will you briefly relate how you came to know her then? A Because as the note teller, we were putting through this loan for $5,000, as security for which we took the mortgage.

Q And you dealt with her personally? A Well, no, not personally. Mr. Holweg did that with her; but as I was right alongside of the desk there I know what was going on, and the note was turned over to me with the mortgage.

The Court: She executed the mortgage?

The Witness: Yes, sir.

Q On December 19, 1927, you have testified she executed an agreement or guaranty? A That is right.

Q Mr. Boan, I offer you this writing here, and ask you if that was the agreement she executed (handing witness document). A (Examining) Yes.

Q And how do you know? A Well, my signature is on there, and my seal.

Q And as what, in what capacity? A Notary Public of the State of New Jersey.

Q And when did she sign that? A December 19, 1927.

Q Who were present at the time she signed it? A Mr. Holweg, Mr. Galm, Mrs. Galm and myself.

Q Does Mr. Holweg's name appear on that instrument? A Yes; he is the witness to Mrs. Galm's signature.

Mr. Chandler: If it does not take too long, I am going to ask the witness to read it in full. It is not very long. It is rather important and it is not very long.

Q Will you please read it? A (Reading.) "Newark, N. J., Dec. 19, 1927. For and in consideration of the sum of $1, to me in hand paid by Fidelity Union Trust Company, Citizens Branch, of Newark, N. J., the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I hereby guarantee to said bank, its successor, successors or assigns, payment at maturity of the bills, notes, checks or other evidences of debt not exceeding the sum of $20,000 (twenty thousand dollars), either made or endorsed by Adolph C. Galm, already discounted or which may hereafter be discounted by said bank for the said Adolph C. Galm, together with all legal or other expenses of or for collection; demand of payment and notice of protest waived. I hereby declare this guaranty to be a continuing guaranty of the payment of such bills, notes, checks or other evidences of debt up to said sum of $20,000, made or endorsed by said Adolph C. Galm, until revoked by me in writing, and a copy of such revocation delivered to said bank. Ola E. Galm. In the presence of C. W. Holweg. State of New Jersey, County of Essex: ss. On

the 19th day of Dec., in the year one thousand nine hundred and twenty seven, before me personally came Ola E. Galm, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged that she executed the same. Elmer W. Boan, Notary Public of New Jersey. My commission expires May 11, 1930. (Seal.)"

Mr. Chandler: I offer this to be marked for further identification.

The Court: You can mark it in evidence, if you wish.

Mr. Chandler: I will put it in evidence then.

(Document referred to received in evidence and marked Exhibit P. 1.)

Q Now, Mr. Boan, at the time of the execution of that document, do you know in what manner the document was presented to her? A Presented by who?

Q To Mrs. Galm. A It was on Mr. Holweg's desk at the time. I was sitting at Mr. Holweg's desk.

Q Will you relate all the details of the execution? A Well, Mr. Holweg called me out. I came out to his desk with my seal. He told me that Mrs. Galm was here to sign this guaranty for $20,000. I asked her if she understood and had read the agreement and she said that she had; and as she signed her name, I signed my name as notary and put the seal on the paper.

Q And when you were called in by Mr. Holweg, was that the first you knew that she was

in the office? A Yes. That is just when she came in there at the time.

Q You had not seen her before, sitting there, or had you? A Well, I just can't recall. Well, she had been there a couple of minutes, but it wasn't for any long period, because we had been expecting them in.

Q What became of that guaranty after she executed it? A Well, it was probably put away in our files.

Q In your files—the files of what, the bank? A The files of the bank.

Q Now, did Mrs. Galm stay around any length of time after she signed that? A Not for any considerable length of time, no; I don't believe so.

Q Will you relate, in a little more detail, as to how the contents were explained to her, to your knowledge? A Well, I don't know what happened before I got out there.

Q While you were present. A When I got out there I asked her if she had read the agreement and understood it.

Q And she said what A She said yes.

Q Then what happened? A I asked her to swear to the statement, and she did, signing her name.

Q And then what did she do with the paper? A She signed the paper.

Q And what did she do with the paper? A Handed it to Mr. Holweg.

Q Then what happened? A He took that, and later on it came in to the note teller's cage.

Q About how much credit was standing against Mr. Galm at that time? A $19,300.

Q And will you relate, generally, with respect to that credit—was it decreased or in-

creased, and in what way? A It was increased through the following year by $12,500, through three or four loans, through the A. C. Galm, Incorporated, and endorsed personally by Mr. Galm.

Q And was his personal credit raised at all? A I believe it went a little bit over $20,000.

Q Did you have occasion, in your capacity either as note teller or as assistant secretary and treasurer, to receive any of the notes which were made by him? A I did.

Q You are familiar with his signature, are you? A I am.

Q And for how long had you been so familiar? A With his signature?

Q Yes. A From the time that he opened the account.

Q And how long has that been? A Well, I don't just remember the exact date. It was over a year previous to the signing of this guaranty; probably closer to two years.

Q Now, about how many notes were due and unpaid that never have been paid. A That never have been paid?

Q That never have been paid. A I don't know the exact number. There is probably seven or eight notes.

Q Would you recognize them if you saw them? A I would.

Q About how much do those notes amount to, in all? A Between $32,500 and $33,000.

Q I am going to hand you these notes and ask you if you can identify them, one by one.

The Court: I am just wondering if you have had an opportunity to check up these notes from the complaint, and whether or

not there is any dispute of these notes, as far as Mr. Galm is concerned.

Mr. Corn: No, we have no dispute about them. We simply did not know about them; but if this witness says they are his notes, and unpaid, that is as far as we will go. We have no knowledge of them, but no contradictory evidence.

Mr. Chandler: Suppose we take these notes up one by one.

Q Will you identify that note, please (handing witness document)? A (Examining.) This is dated December 11, 1928, for $500.

Q And who made that note? A Adolph C. Galm.

Q And how was it made?

By the Court.

Q And endorsed by him? A Payable to "Myself" and endorsed by him; $500, December 11th. "Three months after date I promise to pay to the order of myself, $500."

Q Discounted to his credit? A Yes, sir.

Q And now unpaid? A Now unpaid.

By Mr. Chandler.

Q Will you identify this note, Mr. Boan?

The Court: Give us the date.

A December 17th is the date; due January 17th; for $1,200. "One month after date we promise to pay to the order of ourselves, $1,200. A. C. Galm, Incorporated, A. C. Galm, President." Endorsed "A. C. Galm, President," and "A. C. Galm," personally.

Elmer W. Boan, direct.

Q I hand you this note—

By the Court.

Q And discounted? A Yes, these are all discounted.

Q All discounted and unpaid? A Yes, sir.

By Mr. Chandler.

Q The next one? A $2,500, October 17, 1928.

The Court: Made and endorsed?

The Witness: By Adolph C. Galm—unpaid.

Q Read the next one. A $1,000, November 5, 1928; signed and endorsed by Adolph C. Galm.

Q And now held by the bank? A Unpaid.

The Court: Discounted?

The Witness: Discounted and unpaid.

Q I hand you another note. A September 17, 1928; $15,500; made and endorsed by A. C. Galm; discounted by the bank; still unpaid.

Q I hand you another note.

Mr. Hood: Did it go to his credit?

The Witness: Credited and discounted.

A September 20, 1928; $8,800; A. C. Galm, Incorporated; endorsed personally by A. C. Galm; and credited to the account of A. C. Galm, and remains unpaid.

Q I hand you another note. A $2,500; November 27, 1928; signed by A. C. Galm, Incor-

porated; endorsed by them, and signed personally, endorsed personally, by A. C. Galm; discounted and credited, and remains unpaid.

By the Court.

Q Was that discounted for the credit of A. C. Galm, individually? A No; that was A. C. Galm, Incorporated.

Q But this is endorsed individually? A Yes, sir. $1,000; December 5, 1928; made and endorsed by A. C. Galm; credited to his account and remains unpaid.

By Mr. Chandler.

Q Here is the last one. A $300; December 3, 1928; made and endorsed by A. C. Galm; discounted and credited to his account and remains unpaid.

Mr. Chandler: I ask that all these notes be admitted in evidence.

The Court: They will be.

(Nine notes referred to received in evidence and marked, respectively, Exhibits P. 2 to P. 10, inclusive.)

Q Have you figured interest on any of these notes? A I have.

Q And on what notes have you figured interest on? A I have them listed here. $15,500, that is due January 17th; for $300, January 3rd; that is due January 7th; $1,200, January 17th.

Q What year were all those dates? A 1929; and $2,000 on acocunt of the $8,800 note—which will make the total $20,000.

Q And what is the date of that? A January 17, 1929.

The Court: The total of these six notes given by Mr. Boan amounts to $33,300.

The Witness: That is the total I have; yes, sir.

Q And you have figured interest from what dates of these notes? A From the due dates of the notes up until—to this date.

Q That is, up to today. And what do you figure that interest amounts to? A $2,306.14.

Q And, in addition to the guaranty, what would the total sum be? A $22,316.98; that includes protest fees of $19.44.

Q Now, Mr. Boan, from those notes there, how much had the credit of Adolph C. Galm been increased with the bank since the execution of that guaranty? A Well, at the time of the guaranty his personal obligation was $19,300; the total of these notes just listed is $33,500.

Q $33,300, was it? A Thirty-two or thirty-three thousand five hundred.

Q And these notes which you have just identified, do they represent an extension and continuation of his credit? A Absolutely.

Q In other words, what became of the notes at the time of the execution by Mrs. Galm of this guaranty? A There were renewals taken.

Q And additions given? A Yes.

Cross examination by Mr. Corn.

Q Mr. Boan, your memory is very clear as to what happened on December 19, 1927, in this transaction, is it not? A Yes.

Q Do you recall about what time of the day this was? A No, I do not.

Q Morning or afternoon? A Couldn't say.

Q Before or after banking hours? A It was during banking hours.

Q And Mr. Galm was there? A Absolutely.

Q And Mrs. Galm? A Yes.

Q On how many occasions prior to this had you seen Mrs. Galm? A One occasion that I am certain of.

Q And when was that? A About a month previous.

Q That was the transaction where she borrowed $5,000? A That is right.

Q And gave a mortgage? A Yes.

Q You knew about that transaction, did you not? A Yes, sir.

Q When you came into the room had Mrs. Galm already signed this paper? A She had not.

Q Had Mr. Holweg signed it? A He had not.

Q Did you tell Mrs. Galm what this paper was? A I asked her if she had read the contents and understood it.

Q Did she hold this paper at the time that you were talking to her? A She did; she had it in her hand, yes.

Q Is that the entire conversation you had with her? A That is all.

Q You simply walked in, and asked her if she had read this paper and understood it, and that was all? A That is all.

Q You didn't even say, "How do you do, Mrs. Galm," or anything else? A Well, that might have happened before.

Q I am asking you on this particular occasion. I would like to know everything that happened on this occasion. A I had known Mrs. Galm from the month before.

Q Certainly you did. A Certainly.

Q Now, just what happened on December 19, 1927, when Mrs. Galm was there? A I was called out from the note teller's cage—

Q Yes? A To take her affidavit. Mr. Galm was there. I guess we said, "Good morning."

Q Anything else said? A Not that I remember; no.

Q Anything said about an extension of credit? A Not a thing.

Q And did you ask Mrs. Galm to sign? A Did I ask her to sign it?

Q Yes. A I asked her had she read the contents, and she was ready with pen in hand to sign it.

Q Did you tell her what this was? A Tell her what what was?

Q This paper. A I told her it was an agreement. She knew it was an agreement. I didn't read the contents to her. I asked her if she understood what the paper was.

Q Did you know what this paper was? A Aboslutely.

Q Did you tell Mrs. Galm what you knew about this paper? A No.

Q And she signed it—and then did you sign it? A Absolutely.

Q And did Mr. Holweg sign it before you? A He witnessed it first.

Q Was this paper all prepared at the time when you signed it? A Yes.

Elmer W. Boan, cross.

Q Was anything typewritten in or written in there after you came into the room and before you signed your name to this? A Yes.

Q What? A Mr. Holweg had dated the affidavit.

Q Anything else? A That is all.

Q Just the date on the affidavit? A The agreement was typewritten on the top; filled in with typewriter.

Q And while you were there Mr. Holweg filled in the date? A Yes.

Q Will you examine this and see if Mr. Holweg filled in anything besides the date (handing witness document)? A (Examining.) He dated the affidavit and filled out the whole bottom of the affidavit.

Q He filled that out? A Yes.

Q Mr. Boan, will you tell us when this paper was drawn up—whether it was drawn up on December 19, 1927, or prior thereto? A I couldn't tell you.

Q The first time when you saw it is when you came in? A No. No, it had been around the bank for a couple of days, waiting for Mrs. Galm to come in and sign it.

Q When you saw this paper was it flat or was it folded? A I can't remember.

(At 1 o'clock P. M., the Court takes a recess until two o'clock P. M.)

AFTER RECESS.

ELMER W. BOAN, resumed the stand.

Cross examination by Mr. Corn (continued):

Q Mr. Boan, can you tell us what was done with this paper after it was signed? A Why, it was left in Mr. Holweg's possession, right on his desk.

Q Did you see it afterwards? A Later on?

Q Yes. A Yes, it came in to my cage, the note teller's cage, and we filed it away with the rest of our guarantees and collaterals.

Q Did you ever notify Mrs. Galm that this had been signed?

Mr. Chandler: I object to that, your Honor.

The Court: I sustain the objection.

Q Did you ever notify Mrs. Galm after this was signed that you were extending credit to her husband?

Mr. Chandler: I object to that.

The Court: I sustain the objection.

Mr. Corn: That is a defense that we have.

The Court: I read it.

Mr. Corn: And that matter came up before the Chief Justice on a motion to strike it out as frivolous, and the Chief Justice refused to strike it.

The Court: An exception may be noted.

Elmer W. Boan, cross.

Q Did you give any notice to Mrs. Galm that these notes were not paid when presented?

Mr. Chandler: I object to that, your Honor.

The Court: I sustain the objection.

Mr. Corn: The complaint, if your Honor please, states that the notice of dishonor was sent.

The Court: The complaint states what?

Mr. Corn: The complaint states that notice of dishonor was sent.

The Court: Yes, but she was not the endorser of these notes. Notices of dishonor, I assume, were sent to the endorser. She was not entitled to notice; she was not an endorser of these notes; she was a guarantor.

Q Mr. Boan, at the time when you were there with Mrs. Galm, and this was signed, was anything paid to Mrs. Galm?

Mr. Chandler: I object to that, your Honor. I don't think that is necessary. The paper shows the consideration, your Honor.

The Court: I sustain the objection.

Mr. Corn: This is another defense that we have in our complaint.

The Court: So I have read—in your answer, you mean.

Mr. Corn: Yes, sir; in the answer; and we have the right, I believe, on cross examination, to go into our defense on the question of consideration.

The Court: An exception may be noted.

Elmer W. Boan, cross.

Q Mr. Boan, did you get any financial statement from Mrs. Galm at the time this was signed?

Mr. Chandler: I object to that.

The Court: I sustain the objection.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Was anything else signed at the same time that this was signed? A I don't know.

Q Who had charge of the giving of the credit on this account?

Mr. Chandler: I object to that, your Honor. That is not cross examination.

The Court: I sustain the objection.

Q Did you ever see this paper before this occasion on which Mrs. Galm came in and signed it? A I believe I did.

The Court: You asked that question this morning, and he said he did.

Q How long prior?

The Court: A few days, he said. You have asked those questions already.

CHARLES W. HOLWEG, sworn in behalf of plaintiff.

Direct examination by Mr. Chandler.

Q Mr. Holweg, have you been employed by the Fidelity Union Trust Company? A Yes, sir.

Q And when were you first employed—about how long ago? A With the Fidelity Union since 1921.

Q And how long did your employment continue? A Until July of this year.

Q And in what capacity or capacities did you serve? A Everything from mail clerk to assistant vice-president.

Q And where did you carry on your duties? A You mean at the time that I severed connections?

Q No, from 1921 on. A Well, with the Fidelity Union Trust Company, wherever their office happened to be.

Q The main office? A Not always, no.

Q Have you been associated with the Citizens Branch? A I have, since February of 1925.

Q And in what capacity did you serve up there? A Well, it is a little—the question is a little bit peculiar, because at the time that I went there the bank was the Citizens National Bank & Trust Company, which at that time was established by the Fidelity.

Q It later became merged, did it not? A I went there as cashier of that bank.

Q And how long were you cashier? A Until, I believe it was, June 30, 1927.

Q And then? A And then it was merged with the Fidelity Union, and I became assistant vice-president of the Fidelity Union.

Q And you were all that time at the Citizens Branch? A At the Citizens Branch.

Q Until this last year? A Yes.

Q And from June 30, 1927, in connection with your duties, what authority did you have at this branch? Were you in charge? A I had charge of the Citizens Branch at Clinton avenue.

Q And from what date did you have charge? A June 30th or July 1st, 1927, until this year.

Q Now, Mr. Holweg, did the Citizens Branch, to your knowledge, have credit relations with a certain Adolph C. Galm? A They did.

Q And can you inform the Court and jury briefly what those relations were, beginning in the year 1927? A What the relations were?

Q Yes.

The Court: Is that in question? I understood Mr. Corn to say that that was not questioned at all. The only thing that was questioned in this case was this guaranty agreement. That is correct, is it not, Mr. Corn?

Mr. Corn: No, your Honor. There are a number of questions here in this case besides those that I have raised in my special defenses, that claim no consideration and no notice. The questions here raised, besides the execution of this agreement, are that we have denied that the bank—

The Court: I understood you to say that there was no question about these notes that Mr. Boan—

Mr. Corn: No, there is no question about the execution of them, or that they have not been paid.

The Court: Nor the credit which Mr. Galm had there.

Mr. Corn: No; but we do deny that they were discounted by the bank on the inducement of this guaranty.

The Court: That is a legal question. That is not a factual question.

Mr. Chandler: I would like to develop the facts which led up to the execution of this guaranty by the defendant.

The Court: If you want to take the time to do that—

Mr. Chandler: Very well. I will waive that.

Q Mr. Holweg, do you recognize the defendant Mrs. Galm? A I do.

Q Where is she? A Right there (indicating).

Q When did you first see her? A Well, some time during 1927; I can't tell the exact month.

Q How many times did you see her before the purported execution of this agreement? A I saw her a month before that. She executed a mortgage with us.

Q And thereafter? A You mean after the signing of the agreement?

Q No, after the execution of the mortgage. A I don't believe that we seen her in between the two times.

Q Did she have an account at the bank? A She has an account there; personal account.

Q And did you see her in connection with that account? A I hardly think so. Mr. Galm did most of the business connected with that personal account of Mrs. Galm.

Q Mr. Galm being her husband? A Yes.

Q Now, Mr. Holweg, will you relate just what happened on December 19, 1927, beginning— A (Interposing.) Well, we had under discount with Mr. Galm personally, at that time, a line of credit which amounted to somewhere in the neighborhood of $19,000—I think it is $19,300 something—one note of which was coming due shortly—I think it was on the 20th of December—and he had some building operation in Red Bank, and that he would need some more money, and wanted us to continue his line of credit with us; so we told him we couldn't extend him any more credit, or continue the line as it was, unless we had some additional collateral of some kind; so after talking it over with Mr. Galm, he—

Mr. Corn: If your Honor please, I don't believe this conversation is binding on the defendant.

The Court: No—after having some other conversation, Mr. Holweg is saying—

The Witness: (Interposing.) With Mr. Galm, who suggested that we accept the guaranty of his wife, Mrs. Galm, which we agreed to do.

Q And in furtherance of that conversation you had with Mr. Galm, then, what happened? A Well, we made arrangements to sign a guaranty for $20,000.

Q Who was to sign that guaranty? A Mrs. Galm. Through Mr. Galm, we made an arrangement that he would give us a guaranty that was signed by his wife for $20,000, guaranteeing any notes made or endorsed by him—which was subsequently signed.

Q Well, now, will you relate just what happened on December 19, 1927? A Well, we had prepared the guaranty—

Q How long before? A Well, one or two days before; that is, it was filled in on the typewriter, so that it would be ready when Mr. and Mrs. Galm came up, for which arrangements had been made; and on December 19th they both appeared at the bank.

Q Now, will you relate exactly what happened from the time they first appeared? A Exactly what happened?

Q Yes. A You mean the conversations we had?

Q All the conversation, either with Mrs. Galm, or with Mr. Galm in the presence of Mrs. Galm. A Well, there wasn't much conversation necessary, because the arrangements had already been made with Mr. Galm, and he brought his wife in for the special purpose of signing this guaranty; and we presented it to her and explained to her what it was.

Q And who explained that to her? A I did.

Q And what did you do when you explained it to her? A I couldn't tell you the exact words, but it was explained to her that this was a guaranty covering any notes endorsed or made by Mr. Galm to the extent of $20,000.

The Court: Was it read to her?

The Witness: Word for word, no; I don't think it was.

Q And after the contents of this paper were explained to Mrs. Galm, then what happened? A Why, we had Mr. Boan come in and take the affidavit; Mrs. Galm signed it in his presence and I witnessed it.

Q Mr. Holweg, I hand you this paper and ask you if that is the guaranty which was signed by Mrs. Galm (handing witness document). A (Examining.) It is.

Q And how do you identify it? A By my signature.

Q In what capacity? A As witness, "In the presence of."

Q Did she sign this in your presence? A She did.

Q And was Mr. Boan present at that time? A Yes, sir.

Q What did he do? A Took the notary's acknowledgment.

Q At the same time—all were present at the same time? A Yes.

Q Now, will you relate what happened to that paper after Mrs. Galm signed it? A Why, it was placed in our files in the bank.

Q Before that, when Mrs. Galm—just after she had signed it, what did she do with it? A What did she do with it?

Q Yes. A She had nothing to do with it. It was in our possession.

Q She left it in your possession? A She left it with us.

Q And did she say anything with respect to it? A I don't believe so.

Charles W. Holweg, cross.

Q After the paper was left in your possession, what did Mrs. Galm do? A She went home, I guess. I don't know.

Q Mr. Holweg, will you relate the further credit relations that you had with Mr. Galm after the execution of this guaranty?

The Court: Mr. Corn has already said that he would not question the credit relations which were detailed by Mr. Boan.

Cross examination by Mr. Corn.

Q Mr. Holweg, you say that this paper was prepared about two days before December 19th? A Yes.

Q Was that the day that you had the conversation with Mr. Galm? A I believe it was. I couldn't tell you exactly.

Q Prior to December 19, 1927, did you have any conversation with Mrs. Galm with reference to the guaranty? A Prior to that?

Q Yes. A Not on this particular guaranty, no.

Q Or any other guaranty? A We had a mortgage signed by her, yes, about a month before this, which she also signed in my presence.

Q That was a personal loan to her of $5,000? A Personal loan to her.

Mr. Chandler: I object to this line, as immaterial, as to the nature of the loan.

The Court: I see no relevancy to the testimony, except that he has stated that he had seen her before, and this may be a question of the conditions under which he saw her.

Charles W. Holweg, cross.

Q Will you look at this paper and tell us if anything on that paper, aside from the signatures, was filled in on December 19th? A Yes, sir.

Q What? A This is in my writing here, the "19th of December."

By the Court.

Q Is it the acknowledgment that you are referring to? Above the signature I think is what Mr. Corn means, above the signature of Mrs. Galm. A The date of the guaranty.

Q Was that before or after she signed it? A Before she signed it.

By Mr. Corn.

Q After this guaranty was prepared, was it given to Mr. Galm, say, on the 17th of December, when this was prepared? A No, sir.

Q You had it in your possession all the time? A Yes.

Q Was an entry made on the books of the bank of the guaranty of $20,000?

Mr. Chandler: I object to that. I don't see as that is material.

The Court: Well, it may be answered, if he knows.

The Witness: What was the question again, please?

The Court: Whether there was any entry of this guaranty placed upon the books of the bank.

A Well, as far as I know, there may have been; I can't remember just now.

The Court: You do not know?

The Witness: I do not know.

Q Was it at your suggestion that this guaranty was made? A I already told you the thing before—that Mr. Galm made the overtures to us for a continuation and extension of additional credit, and we told him we would have to have some sort of collateral, and he suggested this guaranty of his wife.

Q Did you get any statement from Mrs. Galm?

Mr. Chandler : I object to that, your Honor.

The Court: I sustain the objection. That you have asked, and the objection was sustained before.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Did you know anything at all about Mrs. Galm other that that she was Adolph C. Galm's wife?

Mr. Chandler: I object to that, your Honor.

The Court: I sustain the objection.

Q What happened to this paper after it was signed? A It was placed in the files of the bank.

The Court: You have asked that and he has answered it.

The Witness: Three times.

Mr. Corn: I asked the previous witness, your Honor.

The Witness: And it has been asked me.

Q And it was there kept all the time? A Yes, sir.

Mr. Chandler: I would invite your attention to the fact that the protest is attached to the notes, and I believe that is waived —the protest?

Mr. Corn: Oh, yes.

Mr. Chandler: And giving the usual notice?

Mr. Corn: Notice to her? That is what I want to know.

Mr. Chandler: To the endorser of the paper.

Mr. Corn: If you want to prove that, you had better prove it.

Mr. Chandler: It is in the certificate.

Mr. Corn: He is calling for an admission, your Honor.

The Court: The certificate attached is sufficient proof.

Mr. Chandler: Plaintiff rests, your Honor.

OLA E. GALM, the defendant, sworn in her own behalf.

Direct examination by Mr. Corn.

Q Mrs. Galm, you are the wife of Adolph C. Galm? A I was.

Q Is your husband alive now? A He is dead.

Q And when did he die? A January 14, 1929.

Q Mrs. Galm, on December 19, 1927, were you in Newark, at the Citizens Branch of the Fidelity Union Trust Company? A I was not.

Q Where were you on that day? A At Red Bank, New Jersey.

Q How do you fix that fact? A Because I had a very heavy cold and was ill at that time.

Q On December 19, 1927, did you see Mr. Boan? A I did not.

Q Did you see Mr. Holweg? A I did not.

Q I show you this paper, Exhibit P. 1, and ask you if you ever saw that before (handing witness document)? A (Examining) I never saw this paper before today.

Q Mrs. Galm, did you get any notice from the Fidelity Union Trust Company— A (Interposing) I did not.

Mr. Chandler: I object to that, your Honor.

Mr. Corn: Wait until the question is finished.

The Court: That might be important on the subject of interest, might it not—demand, on the subject of interest?

Mr. Corn: Demand is waived.

Mr. Chandler: Demand is waived in the guaranty.

Mr. Corn: Demand of payment is waived.

Mr. Chandler: And notice is waived.

The Court: That is true. I sustain the objection.

Mr. Corn: May I have a ruling on my defense, your Honor?

The Court: I have sustained the objection to your question. An exception to that ruling may be noted.

Mr. Corn: I just desire a ruling on my defense.

The Court: The effect of that is a ruling on your defense, but I am not called upon now to rule upon that other than to sustain the objection to this question.

Q Mrs. Galm, when is the first time you heard of the existence of this paper?

Mr. Chandler: I object to that.

The Court: The question may be answered.

A About the end of February or the first of March, of the year 1929.

Q And from whom did you hear it? A I first heard it through Mr. McNish, who was manager of my husband's business. He telephoned and said—

Mr. Chandler: I object to that, your Honor.

Q Did you hear it from anybody else? A Later on Mr. Holweg telephoned me, around the same time.

Q That is Mr. Charles Holweg, who was on the stand here? A Yes.

Q And what did he say to you? A Mr. Holweg—

Mr. Chandler: I object to that.

The Court: I sustain the objection.

Mr. Corn: If your Honor please, this is a conversation held with an officer of the bank.

Mr. Chandler: I withdraw the objection, your Honor.

The Court: The question may be answered.

Q What did he say to you? A Mr. Holweg called me and asked me whether I was going to come and settle my husband's notes. I asked him what had I to do with them. He told me that they had found something that would make me have something to do with them, as near as I can remember. I didn't then know what it was.

Q Was anything else said at the time? A As near as I can remember, I don't believe there was much said at the time.

Q Mrs. Galm, after your husband's death, on January 14, 1929, did you go up to the Fidelity Union Trust Company, Clinton Branch? A After he died?

Q Yes. A Yes, I did.

Q How soon after his death did you go up there? A Well, he died—about the following Monday; about five days after, I guess.

Q Did you see any officials of the bank? A I saw Mr. Holweg.

Q Did you have a conversation with him then about the notes made by your husband to the bank? A I asked him to give me a list of notes that were made by Mr. Galm.

Q What else was said at the time? A He asked me if I wanted to endorse those notes,

and I told him I had to think things over first before I did anything.

Q A little louder, please. A I asked for a list of notes—what my husband owed at the time—and he asked me whether I wanted to endorse them at that time, and I told him I didn't know what I could do; I had to think things over.

Q Was anything else said at that time? A No, there was not.

Q Did you go up to the bank again after that? A Yes; I went again after that with Mr. McNish, who was the manager of Mr. Galm's business.

Q Did you have another conversation with reference to the notes? A We had a conversation in reference to the notes, about whether—just what we would do with the notes—nothing definite. I just took Mr. McNish with me—nothing definite said.

Q With whom did you speak at that time? A Mr. Holweg.

Q Will you recite the entire conversation you had with Mr. Holweg at the time you were up there with Mr. McNish? A Mr. McNish and I went up to see what we could do, to make some sort of arrangements of—about business or something—and we asked Mr. Holweg whether Mr. McNish could assume these notes for the business, and he said he would have to take it up with Mr. Merz.

Q What business did you have reference to? A Mr. Galm's hardware store.

Q Under what name was that conducted? A A. C. Galm, Incorporated.

Q Now, Mrs. Galm, in November, 1927, did you make a loan from this bank? A I did.

Ola E. Galm, cross.

Q How much was it? A $5,000.

Q Did you at that time give any security for the loan? A I gave a mortgage on my property.

Q At whose suggestion was the mortgage made?

Mr. Hood: I object to that.

The Court: I sustain the objection. What is the date of that?

The Witness: Around November 1, 1927.

Cross examination by Mr. Hood.

Q This business of your husband's that you referred to, you say was carried on in what name? A In the name of A. C. Galm, Incorporated.

Q It was his? A Yes.

Q He owned it? A It was his business.

Q Is that the concern that made some of these notes that are the subject matter of our investigation today? A Yes.

Q And some of the notes that you wanted Mr. McNish to take over when you went to see Mr. Holweg? A We didn't definitely say what notes; we simply talked of the notes in general.

Q Now, you say that in November you executed a bond and mortgage to the company, did you? A Yes, I did.

Q Will you kindly look at this paper and tell me whether this is the bond that you then executed (handing witness document)? A (Examining) The bond was returned to me—the mortgage was returned to me.

Q Well, turn it over. Take the second page of it. Open it up. Is that your signature?

Look at the bottom and see if that is your signature? A It looks like my signature.

Q Well, was that bond that you had given— A (Interposing) A bond to the Fidelity Union Trust Company.

Q In the sum of $5,000? A For a note borrowed; I gave that as collateral.

Q You gave this as collateral for a note for $5,000 that you borrowed? A Yes.

Q And that was in November, 1927? A If that is the date of the mortgage.

Q It says the "blank" day of November, 1927. A Wasn't that returned with the mortgage after I paid that?

Q I am simply trying to find out whether the bond—I think the mortgage is cancelled, and there is no liability on the bond; so you need not to tell us about that; but I want to know whether this is the bond that you gave at the time, and whether this is your signature? A As far as I know, that is the bond.

Q And as far as you know, this is your signature? A As far as I know; yes.

Q Well, now, I will show you here a deposit card. You ran a deposit with the Fidelity Union, did you not? A Yes, I did.

Q At the Citizen's Branch, in your own name? A Yes.

Q How long had you been running that? A I haven't any idea; I don't know when I started.

Q In connection with the opening of that deposit, did you sign a card? A Yes, I did.

Q So that they might know your name and your signature? A Yes, I did.

Q Is that the card? Will you look at it, please (handing witness card)? A (Examining) Yes, it looks like it.

Q And is that your signature? A It looks like my signature.

Mr. Hood: May I have these marked?

The Court: You may.

(Bond referred to received in evidence and marked Exhibit P. 11.)

(Signature card referred to received in evidence and marked Exhibit P. 12.)

Q Now, do you recall going with your husband to the Citizens Branch of the Fidelity Trust Company? A Yes, I recall going with him one time.

Q At one time. And do you recall whether or not it was in the month of December, 1929? A I don't believe it was.

Q Well, when do you think it was? A I remember going with him at the time I made the loan.

Q Did you go there any after that with your husband? A Not that I know of.

Q Not that you know of. Will you kindly look at the name down here, "Ola E. Galm" (indicating)? Is that your signature (handing witness document)? A (Examining) I can't say that it is; I can't say that it isn't.

Q You can't say that it isn't. Why can't you say that it is? A Because in some respects it looks like mine, and in some not.

Q You would not deny it as your signature? A I wouldn't deny it nor I wouldn't confirm it.

Q What was your illness in December, 1927? A I had a very heavy cold.

Q Over what period of time did that confine you to your house? A I was sick about two

weeks before Christmas until right after Christmas.

Q Two weeks before Christmas until right after Christmas. Then you were out after Christmas? A I was out after Christmas, yes.

Q And you were out two weeks before Christmas? A It was about two weeks before.

Q Up to two weeks before Christmas you were out? A Yes.

Q But from two weeks before Christmas until a week after Christmas, or just after Christmas? A After Christmas, I know.

Q Were you living at that time in Red Bank? A Yes, I was.

Q Were you then the owner of the apartment house there? A It was in the name of a corporation.

Q The name of a corporation. Mr. Galm's corporation? A Not necessarily.

Q Who was interested in the corporation? A Mr. Galm and myself and Mr. Silverman.

Re-direct examination by Mr. Corn.

Q Mrs. Galm, will you look at that paper and tell us if you ever signed any paper on which that was written? A What is that?

Q Will you look at that paper and read it, and say now if you can tell whether you signed any such paper?

Mr. Hood: That is the guaranty.

The Court: She has already covered it. She says she never saw it before. On your direct examination she says, "I never saw that paper before."

Mr. Corn: That is all I wanted to bring out.

Mr. Hood: I wanted to ask one more question, if I could.

Re-cross examination by Mr. Hood.

Q You have no recollection, you say, of having seen Mr. Holweg and Mr. Boan on any occasion? A Yes, I have seen them on occasions; I saw them on an occasion. I saw them when I made that mortgage.

Q Now, with the exception of making that mortgage, you say you have no recollection of seeing them together on any other occasion? A Not together, but I saw Mr. Holweg at several other times.

Q But I mean now whether you saw them together, when Mr. Boan took an acknowledgment of you, and Mr. Holweg was present? A No, I never saw them, only at the time I signed the mortgage.

Q Well, do you say now that you have no recollection of any other such event, or do you say that you did not? A Not that I remember that I ever saw them.

NORRIS McNISH, sworn in behalf of defendant.

Direct examination by Mr. Corn.

Q Mr. McNish, were you connected with Mr. Adolph C. Galm and the A. C. Galm, Inc. Company? A I was.

Q Do you recall Mr. Galm's death? A I do.

Q Do you know when that was? A The early part of January.

Q Of what year? A Of 1929.

Q Following that, did you have any occasion to go down to the Fidelity Union Trust Company, Citizen's Branch, with reference to the notes made or endorsed by Adolph C. Galm? A Yes, I did.

Q Can you recall when that was? A Well, that would be a matter of a few days after his death.

Q Whom did you see there? A I saw both Mr. Holweg and Mr. Boan.

Q Was anything said about a guaranty made by Mrs. Galm? A No.

Q Were you there on an occasion with Mrs. Galm? A Yes, I was.

Q And do you recall when that was? A I don't remember the exact date, though I know it was a matter of about three weeks after my first—I should say about a month after the death of Mr. Galm.

Q And whom did you see then? A I saw Mr. Holweg.

Q Did you discuss these Galm notes? A Yes, we did.

Q And what was said? A Well, the reason for our going there—

The Court: No.

The Witness: I will put it in another way.

The Court: Do not put it in any other way, but just answer the question.

The Witness: I made a proposition to Mr. Holweg along the lines of my taking over or purchasing the business of A. C. Galm, Incorporated from Mrs. Galm, and I wanted to know whether the bank would accept my signature on the notes that were due.

Q What was the reply? A Mr. Holweg said that he would have to take it up with Mr. Merz, and I was to come back within a few days' time.

Q Did you come back? A I did.

Q Did you have another conversation with Mr. Holweg? A I did.

Q Or with Mr. Marz? A With Mr. Holweg and with Mr. Merz.

Q And what was the conversation then? A Well, the conversation—I can't really just say what it was; it was really their answer to my request.

Q What was it? A And they said no, unless I had Mrs. Galm sign the notes that I would give, or some other person who would be financially capable of paying them if I didn't.

Q Was anything said at that time of a quaranty that had already been made by Mrs. Galm? A No.

Q Did you see any of the other officers of the bank after that? A Well, yes; I used to go in there making deposits, oh, for—almost every second day.

Q And on those occasions did you discuss the Galm notes? A I never discussed the Galm notes—well, I should say I would. They told me, for instance, that "a note was due today," or something like that, that notes were

coming due, and they were telling me about them; but that is all the discussion I had regarding the notes.

Q Were there any occasions when any of the officers of the bank came to your place of business? A Yes. Mr. Holweg stopped about —oh, I should say about four times after that date.

Q And did he discuss the Galm notes with you? A Yes. He asked me—well, I guess on every one of the occasions of his visits, he asked me if I had seen Mrs. Galm, and asked me if I would tell her to come up to the bank to straighten out the notes, pay the notes.

Q When was the last time you saw Mr. Holweg? A The last time I saw Mr. Holweg was the latter part of February or the beginning of March; a matter of a few days' time; I am not sure which.

Q Did you discuss the Galm notes at that time? A Yes.

Q What was said? A Well, Mr. Holweg came into the office and asked me if I had seen Mrs. Galm, and I said not in the last few days. He said, "We were looking through our files at the bank, and we have come across something that will be a big surprise to her"; and, naturally, I was interested enough to ask him what the nature of it was, and he said that I would find out soon enough.

Q Was anything else said at the time? A No, I guess that is about all. Mr. Holweg left.

Cross examination by Mr. Hood.

Q Mr. McNish, when you talked with the officers of the Citizen's Branch about the Galm

notes, which ones did you talk about? A Well, I didn't—there were no notes singled out in particular; I should say all of them. They were interested in paying all of them.

Q You were interested in the corporation, were you not? A I was, yes.

Q Was the corporation interested in all the notes? A Well, that I don't know; I couldn't say.

Q Now, you say no particular notes were mentioned? A Why, I should say that there were no particular—all of the notes—well, at different times.

Q You mean all of the notes of Mr. Galm, or all of the notes of your corporation on which Mr. Galm was endorser? A Well, I would say both of the notes that they were interested in.

Q Who was interested in? A The parties that I spoke to about them.

Q Were you going to take over all of Mr. Galm's notes? A Well, I had no specified understanding. The occasion of my request was to find out whether it would be acceptable. I didn't go into any particulars.

Q Well, you were trying to see whether you could take over Mr. Galm's corporate business? A That is right.

Q And you knew that the corporation had outstanding notes that had been discounted by the Fidelity Trust Company at its Citizens Branch? A That is right.

Q And you knew how much they were? A No, I didn't know exactly how much they were.

Q Well, didn't you have access to the books? A Yes.

Q And didn't your books show how much they were? A Well, my reason for saying

that I didn't know how much they were was that there were notes—a list of notes was sent to me by Mr. Holweg or Mr. Boan, I am not sure which, giving a list of the notes applying on the business, and on that list that they gave me were some notes that were listed as personal notes, A. C. Galm notes; and I asked about those notes an account of not being corporation notes, and it was either Mr. Boan or Mr. Holweg informed me that they applied on the business, though they didn't have the corporation name on them.

Q They were applied on the business? A Yes.

Q So they gave you all the notes that they said went into the business? A Yes.

Q And what position did you fill in Mr. Galm's corporation? A I was the secretary of the company.

Q And you had been there for some time before he died? A Oh, yes.

Q So that you were familiar with his business? A I was familiar with his business.

Q And the purpose of your visit to Mr. Holweg was to ascertain as to whether or not, if you took over the business, those notes could be continued in your name? A Well, originally, my requesting that list of notes was to find out just how many notes there were, because we had a note book that was turned over to me—of course, I wasn't familiar with the financing of the business. My position was as outside salesman, and I wanted to know how many notes they had listed, so that I could check them with the note book that I had.

Q But after you found them, your immediate interest was to find out whether or not the

bank would continue to carry a loan of the company in your name? A Not at that particular time, no.

Q At any time in these interviews? A Well, that came at a later date.

Q How much later did it come? A How much later?

Q Yes. A Oh, I don't know; I should say a week or more after I originally requested it.

Q Now, that is, you requested it first a few days after Mr. Galm died? A About that time.

Q And then two or three weeks after, you got down to particulars to find out whether or not the bank would carry your paper? A Well, about that length of time, yes.

Q And the result of that did not come until after a number of interviews, when you were told that it would not? A Two interviews it was.

Q Now, you say that Mr. Holweg came to your shop? A Yes, sir.

Q Did he come to your shop for any specific purpose that he declared to you? A Well, I don't know as he had any particular reason. I think that he was on his way home, and when he came in he used to ask me how business was going.

Q And didn't he tell you that he wanted you to put him in touch with Mrs. Galm? A He asked me if I had seen Mrs. Galm—I said that before—on each one of his visits.

Q So that the purpose of it was as to whether or not she would endorse your paper, wasn't it? A No.

Q What else? A The purpose of his question was the fact that I should tell Mrs. Galm to come up to the bank and take over the notes

at the bank—not pertaining to my interest in it, because that had been turned down.

Q So that he came to see you after your application had been turned down, and he came to see you so that he might have gotten in touch with Mrs. Galm? A Well, he asked me, every time he came, I should say it was for that purpose.

The Court: I thought you said that when you went back and saw Mr. Merz and Mr. Holweg, they told you that they would not take your notes unless you had Mrs. Galm or some other person sign them.

The Witness: That is correct.

Q But that part of the business was through with? A Yes, that part of the business was through with.

Q And he then came to see you specifically for the purpose of having you get him in touch with Mrs. Galm? A And inquiring about the business—how it was going.

Q Well, that he did incidentally; but as far as his own business was concerned, it related to getting in touch with Mrs. Galm? A Well, that was at least part of it, because that is what he asked me.

Q Well, did he speak about anything else, so far as his own business went? A No.

Q That is the only thing that concerned him that he spoke about? A That is the only thing that concerned him, I should say.

Mr. Corn: I wish to note on the record that I would, rather than have my witness here, offer testimony as to my defense; that

is, that there was no consideration moving to Mrs. Galm, and also offer testimony that there was no notice given to her.

The Court: Call your witness.

Mr. Corn: Mrs. Galm.

The Court: I thought that you had proposed these questions to Mrs. Galm.

Mr. Corn: I don't know whether I understood your Honor definitely on the subject, and so I didn't want the record to be barren. I had not proposed the matter for consideration, but your Honor ruled that when I proposed that with Mr. Boan—I expect to prove by Mrs. Galm that she got no consideration for this guaranty.

The Court: Any objection to that?

Mr. Chandler: Yes, your Honor. It depends on what you mean by "consideration." If he means consideration moving to her directly, we object. If Mr. Corn contends to attempt to prove that she got no consideration herself, moving to her personally, of course we object, because consideration has been proven, although not necessarily moving to her.

The Court: Is it your idea that an agreement of guaranty requires a consideration?

Mr. Corn: Yes, sir.

(Argument.)

The Court: The defendant admits the consideration in the agreement of guaranty itself, and I will overrule that defense.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Corn: And the offer of testimony that no notice was given, that is the fourth defense in our answer.

The Court: You already have a ruling upon the offer of testimony. When Mrs. Galm was on the stand before, you asked her that question, objection was made and I sustained the objection; and, as I said then, that is, in effect, a ruling upon that defense.

Mr. Corn: I just wanted to be definite, so that I won't omit anything.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

ARTHUR B. WHITE, sworn in behalf of plaintiff, in rebuttal.

Direct examination by Mr. Hood.

Q Mr. White, you are in the employ of the Fidelity Union Trust Company? A Yes, sir.

Q At the Citizens Branch? A Yes, sir.

Q And you have been there for how many years? A Since February 1, 1925.

Q Have you ever filled the position of paying teller there? A Yes, sir.

Q How long? A From the early part of 1927 to the latter part of 1928.

Q While you were paying teller of the bank, was Mrs. Galm a customer of the bank? A Yes.

Q And running an account there? A Yes, sir.

Q Are you familiar with her signature? A Yes.

Q And passed upon her checks that she drew upon the bank? A Yes.

Q Will you be good enough to look at this bond that I show you, Exhibit P. 11, and look at the signature purporting to be that of one Ola E. Galm, and I ask you whether it is the signature of your depositor of the bank, Mrs. Galm.

Mr. Corn: I object, unless he is going to be qualified as an expert, or unless he saw her sign it.

The Court: He was paying teller of the bank. He says that Mrs. Galm was a depositor there; that he was accustomed to passing upon her signature. I think that qualifies him, unless you desire to cross examine him upon that subject. I think that is one of the classes of experts which is constantly being admitted.

Mr. Cohn: May I cross examine him, your Honor?

The Court: You may.

By Mr. Corn.

Q How long have you been paying teller? A I was paying teller from the early part of 1927 to the latter part of 1928.

Q Did you have any other experience besides that? A Yes, sir.

Q With what banks? A At the main office of the Fidelity.

Q For how long? A I was there three years.

Arthur B. White, in rebuttal, direct.

Q As paying teller? A No, sir; as bookkeeper.

Q Your whole experience then as a paying teller has been of one year? A More than one year. From early 1927 to the latter of 1928 would make it about a year and a half.

Q Do you know what kind of an account Mrs. Galm kept, about how many checks were issued on her account? A No.

Q Or how many times you saw her signature? A No.

Q Did you have complete charge of paying out a check? A Yes, sir.

Q Did you have to consult anybody? A No, sir.

Q Right from the first time you became paying teller? A Yes, sir.

Q And what are you doing now? A Discount work.

The Court: The question may be answered.

By Mr. Hood.

Q What do you say to that, Mr. White? A (Examining document) I would say this is Mrs. Galm's signature.

Q I show you another paper, that is marked Exhibit P. 1, which is the guaranty in this case, and I want you to look at the signature of that, "Ola E. Galm," and I want you to tell me whether or not, if you can, it is her signature (handing witness document)? A (Examining) Yes, sir.

Arthur B. White, in rebuttal, cross.

Cross examination by Mr. Corn.

Q Will you look at that card and this guaranty, the signature on that guaranty, and also the signature on this bond? Do you say that those three were all written by the same party (handing witness documents)? A (Examining) I would say that they were. The characteristics are all the same.

Q Are you sure of that? A Yes, sir.

Q Will you look at the "G"? A Yes.

Q Are they the same? A I would say so.

Q Is this "G" on the signature card and the "G" on the guaranty the same? A Yes.

Q And will you look at the "a" on all of them? A Yes.

Q Would you say they are the same? A Yes. You notice the slope of the slant?

Q And the way it follows the line— A (Interposing) Yes.

Q (Continued) Is that the same? A Yes.

Q The middle "E," is that the same? A Yes.

Q Isn't it a matter of fact that a signature of this type could easily be copied? A I don't know.

Q You have been a paying teller? A Yes.

Q Did you ever run across any forgeries? A Yes, sir.

Q You have seen clever forgeries? A Yes, sir.

Q That a paying teller himself makes a mistake on?

Mr. Hood: I object to that question.

The Court: I sustain the objection.

Q Is this the type of signature that is outstanding, that could be told immediately? A It is a very plain signature, yes.

Q A common signature, isn't it? A Yes.

Q That many people use? A No.

Q Many women write in that style? A That style, but they can't write exactly the same.

Q No, but those are not exactly the same—they are similar? A They are the same.

Q The same? A Yes.

CHARLES W. HOLWEG, recalled in behalf of plaintiff, in rebuttal.

Direct examination by Mr. Hood.

Q Mr. Holweg, how many times after Mr. Galm's death did you see Mrs. Galm? A Possibly four times.

Q And where did you see her? A At the bank.

Q Did you also communicate with her by telephone? A I tried to several times but never could get any answer.

Q Did you have any communication with her by telephone after her husband's death? A No, sir.

Q Did you, at any time after her husband's death, say to her that you found a paper and she would get a big surprise? A No, sir.

Q You also talked to Mr. McNish? A Several times; yes.

Q And where did you talk to him? A Sometimes at the bank and sometimes at the place of business, when I was on my way home.

The Court: It was not Mrs. Galm who said that he spoke of "surprise"; it was Mr. McNish. What Mrs. Galm says he said, when she was having a conversation, was, "We have something that will make you have something to do with them," referring to these notes.

Mr. Hood: She spoke so low that I didn't get it.

The Court: She asked, "What have I to do with them?" and she says he replied, "We have something that will make you have something to do with them."

Q You saw Mr. McNish at the bank on a number of occasions after the death of Mr. Galm? A Yes.

Q Did you see him also at his shop? A Yes.

Q The old Galm, Incorporated? A A. C. Galm, Incorporated.

Q And did you, on that occasion, either in the bank or in his factory, say to him that you have found something in your files that would give her a surprise, or a great surprise, or anything to that effect? A I never said that, because we had the guaranty all the time, and I would not say that.

Q And did you ever forget that fact, that you had a guaranty? A Never have forgotten that.

Cross examination by Mr. Corn.

Q You say you had that guaranty all the time? A Well, since it was signed, yes. We have had it in our files since it was signed.

Q Were you never up to Mr. McNish's store on Bergen street? A Several times; yes, sir; probably every other night for several weeks, because we were trying to get in touch with Mrs. Galm.

Q Did you ever tell him about this guaranty? A I don't believe so, because he has no interest in the guaranty. His interest was only in the corporation; and Mrs. Galm and he were trying to make arrangements with us to continue the business.

Q Did I understand you to say that you did not say to Mr. McNish that you found something that would make Mrs. Galm open her eyes? A That is what I said; I didn't say that to him.

Q You didn't say that to him? A No. He had no interest in that.

Q And you had no conversation similar to that? A To what?

Q That you found something that Mrs. Galm is going to be surprised at? A No. We had it all the time. We didn't "find" it. We had it ever since she signed it. There wasn't any "finding" to it.

Q I am not asking you that. I am asking you if you ever said that to Mr. McNish? A No, I never said that.

Q And you never spoke to Mrs. Galm by 'phone? A No.

Q You knew where she lived, did you? A Yes, I did, and tried several times to get her on the 'phone.

Q And you never spoke to her? A Yes, at the bank, after she came in. She agreed at that time to pay half the notes and continue the other half.

Charles W. Holweg, in rebuttal, cross.

Q But you did not have a conversation with her over the 'phone when she was at Red Bank?
A No.

Mr. Hood: We rest.

Mr. Corn: We rest.

The Court: Is the case closed?

Mr. Corn: Case closed.

The Court: Mr. Corn thinks there has been a mistake in the computation of the interest. Suppose you figure that up while Mr. Corn is delivering his argument, and hand it to me, please.

Mr. Chandler: All right.

Mr. Corn sums up for defendant.

Mr. Hood sums up for plaintiff.

CHARGE TO JURY.

The Court charges the jury as follows:

DUNGAN, *J.:*

Gentlemen, there is no question but that in December, 1927, Mr. Galm, the husband of the plaintiff in this case, was indebted to the Fidelity-Union Trust Company, the plaintiff, in the sum of upwards of $19,000; nor is it disputed that on or about that date he desired to increase that indebtedness, and that he was told by the officers of the plaintiff bank that his indebtedness could not be continued, nor could it be increased without additional security.

Mr. Boan, who was in charge of the notes of the Citizens Branch of the Fidelity-Union, says that upon being told that, Mr. Galm offered to give his wife as security upon his indebtedness, and there is produced here a guaranty, in the words which have been read to you, the principal parts being: "I hereby guarantee to said bank payment at maturity of the bills, notes, checks or other evidences of debt, not exceeding the sum of $20,000, either made or endorsed by Adolph C. Galm, already discounted or which may hereafter be discounted by said bank for the said Adolph C. Galm, together with all legal or other expenses of or for collection; demand of payment and notice of protest waived." Nor is it disputed that at the death of Mr. Galm, which was January 14, 1929, his indebtedness to the bank was upwards of $33,000. To be exact, the notes in this suit amount to $33,300.

We are told by Mr. Boan and by Mr. Holweg, who were connected with the Citizens Branch of

the Fidelity-Union at that time—that is, on December 19, 1927—that Mrs. Galm and her husband came to the bank, and, in the presence of Mr. Holweg and Mr. Boan, signed this guaranty, obligating herself to pay the indebtedness of Mr. Galm, either as maker or endorser of the promissory notes of that bank, to the extent of $20,000, together with expenses of collection, etc. If that be true, the burden of proving which is upon the plaintiff to show that by the greater weight of the evidence, then Mrs. Galm is now obligated to pay the amount of $20,000 of this indebtedness, together with interest and protest fees and expenses; but Mrs. Galm says she never saw that paper before. She denies that she was there with her husband to sign any paper, excepting a bond and mortgage, which were signed about a month before the date of this agreement; but when she is shown the signature, she declines to say whether it is or is not her signature. She says it looks like it; she won't say it is, nor she won't say it is not; and there is produced here the paying teller of the bank, who says that he is familiar with Mrs. Galm's signature, and that the signature to this agreement, in his opinion, is Mrs. Galm's signature, or he says it is her signature. Of course, it must be in his opinion, because he did not see her make it.

In addition to that, we have here, for your own comparison when you go to the jury-room, two admitted signatures of hers: her signature to the bond, and her signature to her deposit card in the bank. In addition to the testimony of the two gentlemen who say they saw her sign it, and the opinion of Mr. White, you may take these standards of comparison of proven

genuine signatures, and say whether or not, from all the evidence, the greater weight of it shows this to be her signature.

Of course, in considering the weight of the testimony, you have a right to take into consideration the interest of this witness. Mrs. Galm is the defendant in this case. She is the one who, if your verdict be in favor of the plaintiff, is to be affected by it. If the judgment should be against her, she would be the one who would be obliged to pay it. Mr. White, as I understand it, is still connected with the Fidelity-Union. Mr. Boan is still connected with the Fidelity-Union. Mr. Holweg is in no way, as far as the evidence shows, connected with the Fidelity-Union at the present time; he says he severed his connection with the Fidelity-Union on July 1, 1930, and is not now connected with it. So, of course, in the weighing of the testimony, you have a right to take into consideration the interest of witnesses, if any they have, in the case.

Where testimony differs as this does, it is for you to determine the credit which you will give to the various witnesses; and if you say that this guaranty agreement was signed by Mrs. Galm, and that the greater weight of the evidence shows that, then the plaintiff is entitled to your verdict for $20,000, with interest amounting to $2,316.98, and protest fees of $19.44, making altogether $22,336.42. Of course, if you say that Mrs. Galm did not sign this guaranty agreement, then she is entitled to your verdict.

The witnesses for the bank, gentlemen, are Mr. Boan, who was handling the notes at the time this transaction took place; Mr. Holweg,

who was then the manager of the bank and assistant vice president; and Mr. White, who was the teller at one time of the Citizens Branch of the Fidelity-Union Trust Company. If I have misnamed these officials, you will disregard any such misnomer.

(The jury retires at 3:59 P. M.)

Plaintiff's Exhibits.

Exhibit P. 1.

Newark, N. J. Dec. 19 1927

For and in consideration of the sum of One Dollar to me in hand paid by Fidelity Union Trust Company, Citizens Branch of Newark, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I hereby guarantee to said Bank, its successor, successors or assigns, payment at maturity of the bills, notes, checks, or other evidences of debt, not exceeding the sum of Twenty Thousand Dollars, either made or endorsed by Adolph C. Galm already discounted or which may hereafter be discounted by said Bank for the said Adolph C. Galm together with all legal or other expenses of or for collection; demand of payment and notice of protest waived.

And I hereby declare this guaranty to be a continuing guaranty of the payment of such bills, notes, checks, or other evidences of debt, up to said sum of Twenty Thousand Dollars either made or endorsed by said Adolph C. Galm until revoked by me in writing and a copy of such revocation delivered to said Bank.

OLA E. GALM.

In the Presence of:
C. W. Holweg

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

On the 19th day of Dec in the year One Thousand Nine Hundred and twenty-seven before me personally came Ola E. Galm to me known and known to me to be the individual

described in, and who executed the foregoing instrument and she duly acknowledge that she executed the same.

ELMER W. BOAN
Notary Public of New Jersey
My Commission Expires May 11, 1930
(Notarial Seal)

Exhibit P. 2.

$300— Newark, N. J. Dec 3 - 1928 (6)
One month after date, I promise to pay to the order of Myself
Three hundred 00.....Dollars
at the FIDELITY UNION TRUST COMPANY
Citizens Branch
Value received.
No..... Due.....
ADOLPH C GALM
8905

Exhibit P. 3.

$1000.# Newark, N. J. Dec 5, 1928 (6)
One month after date, I promise to pay to the order of Myself
One thousand .....Dollars
at the FIDELITY UNION TRUST COMPANY
Citizens Branch
Value received.
No..... Due.....
ADOLPH C GALM
Adolph C. Galm
8981

Plaintiff's Exhibits.

Exhibit P. 4.

$2500.# Newark, N. J. Nov 27 1928 (6)
Four months after date, I promise to pay to the order of Myself
Twenty-five hundred .....Dollars
at the FIDELITY UNION TRUST COMPANY
Citizens Branch
Value received.
No..... Due.....
ADOLPH C. GALM INC.
Adolph C. Galm Inc
A. C. Galm Pres
A. C. Galm
8773

Exhibit P. 5.

$8,800.# Newark, N. J. Sept 20 1928 (6)
Four months after date we promise to pay to the order of Ourselves
Eighty-eight hundred .....Dollars
at the FIDELITY UNION TRUST COMPANY
Citizens Branch
Value received.
No..... Due Jan 21
A. C. GALM INC
ADOLPH C. GALM Pres
A. C. Galm Inc
Adolph C. Galm Pres
Adolph C. Galm
7273
123 180/40

Plaintiff's Exhibits.

Exhibit P. 6.

$15 500 Newark, N. J. Sep 17 1928 (6)
Four months after date, I promise to pay to the order of myself
Fifteen thousand five hundred 00....Dollars
at the FIDELITY UNION TRUST COMPANY
Citizens Branch
Value received.
No..... Due.....
ADOLPH C GALM
Adolph C. Galm
7194

Exhibit P. 7.

$1000.# Newark, N. J. Nov 5, 1928 (6)
Three months after date, I promise to pay to the order of Myself
One thousand .....Dollars
at the FIDELITY UNION TRUST COMPANY
Citizens Branch
Value received.
No..... Due.....
ADOLPH C GALM
Adolph C. Galm
8294

Plaintiff's Exhibits.

Exhibit P. 8.

$2500. Newark, N. J. Oct 17/28 (6)
Four month after date, I promise to pay to the order of Myself
Twenty-five hundred.....Dollars
at the FIDELITY UNION TRUST COMPANY
Citizens Branch
Value received.
No..... Due.....
ADOLPH C GALM
Adolph C. Galm
7926

Exhibit P. 9.

$1200— Newark, N. J. Dec 17 1928 (6)
One month after date, we promise to pay to the order of ourselves
Twelve hundred 00.....Dollars
at the FIDELITY UNION TRUST COMPANY
Citizens Branch
Value received.
No..... Due.....
A. C. GALM INC.
A. C. GALM Pres
A. C. Galm Inc
A. C. Galm Pres.
A. C. Galm
9209

Plaintiff's Exhibits.

Exhibit P. 10.

$500— Newark, N. J. Dec 11, 1928 (6)

Three months after date, I promise to pay to the order of Myself

Five hundred .....Dollars

at the FIDELITY UNION TRUST COMPANY

Citizens Branch

Value received.

No..... Due Mch 1 1

ADOLPH C GALM

Adolph C Galm

7 50

9120

Exhibit P. 11.

KNOW ALL MEN BY THESE PRESENTS That WE, OLA E. GALM and ADOLPH C. GALM, her husband, of the City of Newark in the County of Essex and State of New Jersey, hereinafter called the obligors are held and firmly bound unto FIDELITY UNION TRUST COMPANY, a corporation of the State of New Jersey, with its principal office in the City of Newark in the County of Essex and State of New Jersey, hereinafter called the obligee , in the sum of TEN THOUSAND DOLLARS lawful money of the United States of America to be paid to the said obligee , or to its certain Attorney, successors or Assigns; For which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the

Plaintiff's Exhibits.

day of November, in the year of our Lord One Thousand Nine Hundred and Twenty-seven (1927).

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bounden OLA E. GALM and ADOLPH C. GALM, her husband, their Heirs, Executors and Administrators, shall well and truly pay or cause to be paid unto the above named obligee , its successors or assigns, the just and full sum of FIVE THOUSAND ($5,000) dollars, lawful money aforesaid, on the day of November, One Thousand Nine Hundred and Twenty-eight (1928) and interest on unpaid principal (without deduction or credit for taxes) to be computed from November, 1927 at the rate of six per cent. per annum 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.

AND IT IS HEREBY EXPRESSLY AGREED That the obligors herein, their heirs, executors, administrators and assigns shall not nor will make or claim any deduction from or credit on the interest herein and on the mortgage accompanying this bond agreed to be paid by reason of, on account of, or for any tax or taxes assessed or to be assessed on the real property described in said mortgage or any part thereof and 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 said mortgage, and become due and payable; and should the said interest or any part thereof

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 or any part thereof remain unpaid and in arrears for the space of ninety 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, or should default be made on any installment of principal (if said principal is payable in installments) on any day when it shall become due, the above first mentioned principal sum with all arrearages of interest thereon shall at the option of the said obligee its successors or assigns become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding; and the said obligee its successors or assigns may at its option pay any such tax, assessment or water rent in arrears, and for such insurance as is required by said mortgage, in case such insurance shall not be furnished as required, and the amount so paid shall be added to and become part of the principal sum secured hereby and by said mortgage, and shall be payable on demand with interest at six per cent. per annum.

OLA E. GALM (L. S.)
ADOLPH C. GALM (L. S.)

Signed, sealed and delivered
in the presence of

C. W. HOLWEG

Plaintiff's Exhibits.

Exhibit P. 12.

Authorized Signatures of
GALM, Ola E. For THE CITIZENS NATIONAL BANK and TRUST COMPANY OF NEWARK Newark, N. J.
Ola E. Galm
Address 36 Riverside Ave Red Bank N. J.
Business wife of A C Galm
Introduced By C W H Date Oct 31

The Baker Printing Co., Law Case Printers, 251 Market St., Newark, N. J.

New Jersey Court of Errors and Appeals

FIDELITY UNION TRUST COMPANY, a corporation of New Jersey, *Plaintiff-Respondent,* *vs.* OLA E. GALM, *Defendant-Appellant.*	*On Appeal from Supreme Court.*

APPELLANT'S BRIEF

FACTS

Respondent brought suit against appellant on a guaranty, alleged to have been signed by her, which reads as follows:

> Newark, N. J., Dec. 19, 1927.
>
> For and in consideration of the sum of One Dollar to me in hand paid by Fidelity Union Trust Company, Citizens Branch of Newark, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I hereby guarantee to said Bank, its successor, successors or assigns, payment at maturity of the bills, notes, checks, or other evidences of debt, not exceeding the sum of Twenty Thousand Dollars, either made or endorsed by Adolph C. Galm already discounted or which may hereafter be discounted by said Bank for the said Adolph C. Galm, together with all

legal or other expenses of or for collection; demand of payment and novice of protest waived.

And I hereby declare this guaranty to be a continuing guaranty of the payment of such bills, notes, checks, or other evidences of debt, up to said sum of Twenty Thousand Dollars either made or endorsed by said Adolph C. Galm until revoked by me in writing and a copy of such revocation delivered to said Bank.

OLA E. GALM.

In the presence of:

C. W. HOLWEG.

On December 19, 1927, appellant was the wife of Adolph C. Galm and so continued until his death on January 14, 1929.

Respondent discounted the following notes made or endorsed by Adolph C. Galm:

Note	dated	December 11, 1928	for	$ 500.
"	"	November 5, 1928	"	$ 1,000.
"	"	September 17, 1928	"	$15,500.
"	"	December 5, 1928	"	$ 1,000.
"	"	December 3, 1928	"	$ 300.
"	"	October 17, 1928	"	$ 2,500.
"	"	December 17, 1928	"	$ 1,200.
"	"	September 20, 1928	"	$ 8,800.
"	"	September 27, 1928	"	$ 2,500.

These notes were not paid. Respondent seeks to obtain payment for these notes from appellant on the guaranty to the extent of $20,000 and interest.

Appellant answered denying execution of the guaranty. She set out four defenses: (1) That she was a married woman on December 19, 1927, living with her husband; (2) That none of the notes were made or endorsed by Adolph C. Galm on or before December 19, 1927; (3) That there was no consideration for the making of the guaranty; and (4)

That respondent did not notify her of the acceptance of the guaranty.

Respondent moved to strike out the answer and the four defenses as sham and frivolous. The Court (per Gummere, C. J.) held the answer was not sham, that the third and fourth defenses were not frivolous, and struck out the first and second defenses as frivolous.

Respondent then filed a reply, denying the allegations of the third and fourth defenses.

At the trial the judge refused to permit appellant to go into the matters set up in the third and fourth defenses. This left nothing to the jury except the question of whether or not appellant had signed the guaranty.

The grounds of appeals are: that the first and second defenses were erroneously struck out; that the third and fourth defenses were erroneously overruled; and that the trial judge erroneously overruled four questions relating to the giving of notice to appellant, the payment of consideration for signing the guaranty and the circumstances surrounding the making of the guaranty.

These grounds will be discussed: (1) The Married Woman's Act is a good defense; (2) The guaranty does not embrace the notes in question; (3) The trial judge was bound by the prior ruling on the third and fourth defenses; (4) Absence of consideration is a good defense; (5) Failure to notify the guarantor releases her; (6) Appellant was entitled to ask respondent if it had notified her that it was extending credit to her husband; (7) Appellant was entitled to ask respondent if it had paid her anything on signing the guaranty; (8) Appellant was entitled to ask respondent if it had obtained from her a financial statement when the guaranty was signed.

POINT 1

THE MARRIED WOMAN'S ACT IS A GOOD DEFENSE

We respectfully contend that: (a) Appellant could not become guarantor; (b) She could not guarantee her husband's debts; and (c) She could not guarantee to respondent-corporation.

(a) APPELLANT COULD NOT BECOME GUARANTOR.

The first Act in this State removing the common-law disabilities of married women was entitled, "An Act for the Better Securing of the Property of Married Women," approved March 25, 1852. This Act was amended in 1877 under the title, "An Act to Amend the Law Relating to the Property of Married Women," and still bears this title.

The pertinent provision of this Act, section 5, has gone through the following changes:

Revision of 1877, page 637:

> "That any married woman shall, after the passing of this act, have the right to bind herself by contract, in the same manner and to the same extent as though she were unmarried, and which contracts shall be legal and obligatory, and may be enforced at law or in equity, by or against such married woman, in her own name, apart from her husband; provided, that nothing herein shall enable such married woman to become an accommodation endorser, guarantor, or surety, nor shall she be liable on any promise to pay the debt, or answer for the default or liability of any other person."

As amended P. L. 1895, page 821 (3 C. S. 3226):

> "That any married woman shall, after the passing of this act, have the right to bind herself by contract with any person in the same manner and to the same extent as though she were unmarried, which contracts shall be legal and obligatory, and may be enforced at law or in equity, by or against such married woman, in her own name, apart from her husband; provided, that nothing herein shall enable such married woman to become an accommodation indorser, guarantor or surety, nor shall she be liable on any promise to pay the debt, or answer for the default or liability of any other person; provided further, however, that if on the faith of any indorsement, contract of guaranty or suretyship, promise to pay the debt or to answer for the default or liability of any other person, any married woman obtains, directly or indirectly, any money, property or other thing of value, for her own use, or for the use, benefit or advantage, of her separate estate, she shall be liable thereon as though she were unmarried, anything herein contained to the contrary notwithstanding."

As amended P. L. 1927, page 33:

> "That any married woman shall, after the passing of this act, have the right to bind herself by contract with any person in the same manner and to the same extent as though she were unmarried, which contracts shall be legal and obligatory, and may be enforced at law or in equity, by or against such married woman, in her own name, apart from her husband."

As amended P. L. 1929, page 109:

> "That any married woman shall, after the passing of this act, have the right to bind herself by contract in the same manner and to the same extent as though she were unmarried, which contracts shall be legal and obligatory and may be enforced at law or in equity, by or against such married woman in her own name apart from her husband."

The title of the act: "For the Better Securing of the Property of Married Women," and of its amendment: "Relating to the Property of Married Women," must be read in conjunction with the body of the act to determine the contracts into which a married woman may enter. Therefore, the contracts which she may make must be "For the Better Securing" *of her property* or "Relating" *to her property.* If the enacting clause does not secure or relate to her property, the statute is unconstitutional.

> "Under the provision of our constitution, the title of a statute is not only an indication of the legislative intent, but is also a limitation upon the enacting part of the law. It can have no effect with respect to any object that is not expressed in the title."
>
> Hendrickson *v.* Fries (E. & A. Ct. 1883), 45 N. J. Law 555, at p. 563.

> "In view of the provision of our Constitution (article 4, sec. 7, pl. 4) that 'every law shall embrace but one subject and that shall be expressed in the title, it is entirely well established that the title forms a limitation upon the enacting clauses, and any construction of the latter that would give them a scope

> beyond the object expressed in the title is, for this reason, to be rejected."
>
> Jordan *v.* Moore (E. & A. Ct. 1912), 82 N. J. Law 552.

At common law a married woman could make no contract.

> "Under the common law, a married woman cannot be made personally liable for a debt. She is unable legally to contract it."
>
> Eckert *v.* Reuter (Sup. Ct. 1869) 33 N. J. Law 267.

The Married Woman's Act, being in derogation of the common law, must be strictly construed. Her common-law disability remains in full force except to the exact extent to which it is removed by the Statute.

> "The effect of these constitutional and statutory provisions is not to place married women in the unqualified position of femes sole, but on the contrary their common law status remains except to the extent that it has been modified by such provisions." 13 R. C. L. 1268.

The Statute should be liberally construed in favor of the married woman.

> "The intention of this legislation (Married Women's Act) was to free the married woman from the hardships under the common law which subjected her real estate so largely to her husband's control, and to give her the sole use and enjoyment of her separate estate. It should be liberally construed in her favor, so that all the benefits intended thereby shall inure to her."
>
> Bucci *v.* Popovich (Chanc. Ct. 1921) 93 N. J. Eq. 121.

At common-law she could not be personally bound, although equity in certain cases might create a charge on her estate.

> "There is no doctrine of the common law better settled than that a married woman can enter into no contract or covenant by which she will be personally bound."
>
> Pentz *v.* Simonson (Chanc. Ct. 1861) 13 N. J. Eq. 232.

Did the Legislature intend to change the common-law by declaring that she is personally bound by contracts? Surely not by passing an act for the better securing her property or relating to her property.

Reading the enacting clause and the title together, as should be done, a married woman has the right to bind herself by contract for the better securing (or relating to) her property. If the contract does not better secure or relate to her property, it is as void to-day as it was at common-law. Under the present title of the act, there has been removed none of her disabilities except such as relate to her property.

Whatever may be the effect of other undertakings, it cannot be denied that a married woman's property is not better secured on her signing as guarantor or surety, unless it be shown that her estate received a benefit therefrom. In order to enforce against her the obligation of guarantor or surety, plaintiff must prove that her property was thereby better secured or at least that the obligation had a direct relation to her property.

Our Courts have frequently pointed out the grave danger of permitting a married woman to be answerable for the debt of another.

"I can, therefore, readily comprehend how the English doctrine has grown up, that all the debts incurred by a married woman for her own benefit, or for the benefit of her estate, should be imposed on her individual property, on the ground of a manifest design to create such an encumbrance, and because it is one of the modes of enjoying property, to incur debts on the credit of it. But, when we proceed a step farther, and come to an agreement to stand as the surety of another, I confess I lose sight of the principle on which the general system should rest. Such obligations have nothing to do with the separate estate of the feme. The right to create them is a personal right, unconnected with the ownership of goods or lands, and not embraced in the fullest exercise of the just disponendi. Such obligations are not, in any sense, necessary, or even convenient, to the enjoyment of her property by the married woman. The true doctrine seems to me this: That to the extent that the feme does any act which enables her to use or enjoy her separate estate, the principles of equity will validate such act, but beyond this limit she is not discovert, and cannot bind herself or her possessions.

Nor do I think that the principle which would remove from the present case, and from analogous cases, the disability of the married state, would be a wise or politic regulation. Few women have, or are likely to have, business habits or training. From their habits in life they are necessarily exposed to imposition. They must rely mainly upon others with respect to the legal effect of their acts. To give to such an inexperienced body of persons the

> right to endorse notes, to accept bills, and to become surety on bonds and other instruments, under the urgency of their husbands, or from the importunities of their relatives or friends, would not be a boon, but a calamity. In my opinion there is nothing in the general doctrines appertaining to the subject, that should compel this court to concede the existence of the power in question, nor is there any consideration of public policy which seems persuasive of such a concession. I agree therefore, with the Chancellor, as to the general principle that a court of equity will not effectuate the contract of a married woman, not founded on a valuable consideration, binding her as surety for another."
>
> Perkins *v.* Elliott (E. & A. Ct. 1872) 23 N. J. Eq. 526, at p. 532.

The 1927 amendment does not state that a married woman may become surety for another. Had the legislature so intended, it would have inserted an appropriate provision.

> "I can see nothing in this language expressive of a purpose to extend to the wife the power of binding herself as surety. If so extraordinary a power had been designed, it is rational to believe that it would have been conferred by plain language. Nor is the title of the act indicative of any such object. As a matter of just construction, then, I thing this act embraces contracts only which are made by a married woman when the consideration moves to herself, and that it has no relation to contracts of suretyship or those imposing a merely collateral obligation."
>
> Vankirk *v.* Skillman (Sup. Ct. 1870) 34 N. J. Law 109, at p. 115.

In order to recover at law, plaintiff must show that the married woman has an estate on which equity would fasten the debt.

> "It is essential, therefore, to recovery in an action at law, by force of the statute of 1862, that the wife shall be shown to have a separate estate chargeable in equity with the debt contracted by her. The absence of that element in this case precludes the plaintiff from invoking the support of that statute."
>
> Condon *v.* Barr (Sup. Ct. 1886) 49 N. J. Law 53.

We feel sure that our Court of Chancery would not countenance charging Mrs. Galm's estate with her husband's debts on her guaranty, without convincing proof that her estate was benefitted by the guaranty.

Under the act, title and body, a married woman can contract with respect her property. This does not give her general power to contract.

> "Very often the statutes authorize a married woman to contract only with regard to and for the benefit of her separate estate, and such statutes are not construed as empowering them to contract generally."
>
> 13 R. C. L. 1272.

She cannot become surety or guarantor.

> "A married woman cannot, unless enabled by statute, become surety for her husband or for a stranger. She cannot bind herself or her separate property either at law or in equity by such a contract. Her contract of suretyship is absolutely void at law, and equity will not charge her separate estate where she received no benefit. In many states, by statute, a mar-

> ried woman may hold, manage and contract with reference to her separate property the same as if she were unmarried. She cannot, however, by virtue of such a statute become a surety. The intention was, by such statutes, to remove her disabilities for her interest, and not to enable her to contract onerous obligations from which she derived no benefit."
>
> Brandt, Suretyship & Guaranty (3d Ed.) sec. 9.

It may well be doubted whether our Legislature intended to include a guaranty under "contract." The guaranty here contained no mutuality of obligation, for the Bank did not undertake to do anything at all.

> "While perhaps a complete and final definition of the term will never be formulated, the statement that a contract is 'an agreement which creates an obligation' would seem to embody all of its essential elements, which may be enumerated as: (1) Parties competent to contract. (2) A subject matter. (3) A legal consideration. (4) Mutuality of agreement and (5) Mutuality of obligation."
>
> 13 C. J. 237.

There were here no reciprocal undertakings; it was not a bilateral contract. Nor was the Bank induced by the guaranty to discount the notes it already held, so that it was not a unilateral contract.

> "A bilateral contract is one in which there are reciprocal promises, so that there is something on both sides to be done or forborne, while a unilateral contract is one in which there is a promise on one side only, the consideration on the other side being executed."
>
> 13 C. J. 247.

The word "contract" is used in its ordinary sense, as a contract of sale or of building, where money or property is exchanged for property. A technical contract, if it be a contract, like that of surety or guaranty, was not contemplated as to a married woman, who for ages was legally unable to make the most simple contract.

It is significant that the Act provides a married woman shall "have *the right* to bind herself by contract." Does this mean the right to divest herself of her property by guaranty? Bearing in mind the policy of our law with respect married women, it would seem that she was given the right enter into contracts whereby she does or might benefit, and not an obligation from which the most she can hope for is to be spared from paying moneys she did not receive.

(b) SHE COULD NOT GUARANTEE HER HUSBAND'S DEBTS.

Our Legislature gave the right to a married woman to hold property and, in order to better secure the property, prohibited it from being liable for her husband's debts.

> "That in all cases in this act in which property, things in action, or other rights or interests are herein declared to be the property of a married woman, such property, things in action, and rights and interests shall not be subject to the disposal of her husband, nor liable for his debts."
>
> Married Women's Property Act, sec. 15 (3 C. S. 3238).

What cannot be done directly should not be allowed to be done indirectly. Whether a married woman loses her property by means of guaranty

of her husband's debts or by seizure by his creditors, the result is the same—her property is liable for his debts.

The judgment in this case in favor of respondent against appellant represents, to all intents and purposes, her husband's debts to respondent. Under the judgment appellant will be relieved of her property to the extent of the judgment. Her property will thereby become liable for his debts.

The primary obligor on the notes is Mr. Galm; the notes are his debt. Her estate is not liable for their payment, despite the guaranty.

> "The defendant cannot charge the separate estate of the wife with the debts of the husband, even though the money be advanced upon an express promise, in writing, by her to pay out of a particular fund."
>
> Lawrence *v.* Warwick (Chanc. Ct. 1886) 4 Atl. Rep. 431 (not officially reported).

(c) SHE COULD NOT GUARANTEE TO RESPONDENT-CORPORATION.

Section 5 of the Act, as passed in the 1877 Revision, contains no limitation concerning with whom a married woman may contract. The 1895 amendment provided that she may contract *with any person,* and so does the 1927 amendment in force on December 19, 1927, when the guaranty in question was dated. The 1929 amendment is a copy of the 1927 act except that the words "with any person" is omitted.

We must assume that when the Legislature, in 1895, amended the Act by adding the words "with any person," it intended to limit the contractual powers of a married woman to persons, as distinguished from corporations and associations. Those words were inserted for a purpose, and can-

not mean anything else than that she may make contracts with persons, leaving her common-law disabilities intact as to contracts with those other than "persons." When passing the 1927 amendment, the Legislature retained "with any person." Respondent is and was a corporation on December 19, 1927, and hence Mrs. Galm could make no contract with it other perhaps than such as might be enforced in equity—which does not include a guaranty.

In 1929 the Legislature saw fit to omit the phrase "with any person," thus removing limitation as to the parties with whom a married woman may contract.

POINT 2

THE GUARANTY DOES NOT EMBRACE THE NOTES IN QUESTION

The wording of the guaranty is plain: payment of notes *either made or endorsed by Adolph C. Galm,* these italicized words being used twice (Case, p. 6). Can this mean anything else than that the guaranty referred to notes which had been made or endorsed by Mr. Galm on or prior to December 19, 1927, the date of the guaranty? The past tense, "made or endorsed," is used. Only by converting this into "hereafter made or endorsed," or by similar use of words implying a future making or endorsement, can this guaranty be construed to apply to the notes in question, of which the earliest is dated September 17, 1928.

The rule is inflexible that a guaranty must be strictly construed, so as not to enlarge the liability.

> "The contract of suretyship is construed strictly, and the liabilities flowing from it cannot be extended by implication beyond its pre-

cise terms and scope. A surety's liability is strictissimi juris."

In re Quimby's Estate (Chanc. Ct. 1914) 84 N. J. Eq. 1.

"These words, so far as the undertaking to indemnify is concerned, must be strictly construed, for the liability of a guarantor cannot be extended by implication."

Smith *v.* Dowden (Sup. Ct. 1919) 92 N. J. Law 317.

This defense should not have been stricken out unless the wording of the guaranty is so unambiguous as to leave no doubt but that it applies to notes made or endorsed by Mr. Galm after December 19, 1927; yet the guaranty does not so state. On the other hand, if the wording is ambiguous, and admits of the constructions that it applies only to notes made or endorsed on or before December 19, 1927, and that it applies also to notes made or endorsed after that date, testimony should be taken on that point and the intention left to the jury for determination. At such trial appellant may prove that she knew what notes her husband had made and endorsed on the date of the guaranty and that she was content to guaranty those but no others; she may show that respondent knew of the notes then made or endorsed by Mr. Galm and that the understanding was for the guaranty to attach only to these notes, whether then or thereafter discounted by the Bank.

POINT 3

THE TRIAL JUDGE WAS BOUND BY THE PRIOR RULING ON THE THIRD AND FOURTH DEFENSES.

The order of June 22, 1929, by the Chief Justice recites that the "Third and Fourth Separate De-

fenses are not frivolous" (p. 27, l. 38), and that plaintiffs' motion to strike out the Third and Fourth Separate Defenses is denied (p. 28, l. 10).

The third defense was lack of consideration, and the fourth defense was absence of notice of acceptance.

The trial judge overruled the third defense, and held "The defendant admits the consideration in the agreement of guaranty itself, and I will overrule that defense" (p. 76, l. 35). And likewise the fourth defense was overruled (p. 60, l. 25, to p. 61, l. 15; p. 77, ll. 3 to 13).

The trial judge was a Circuit Court Judge, to whom the cause was referred to trial. He had no power to reverse (in effect) the Supreme Court by declaring that defenses, which that Court had held to be not frivolous, were frivolous. Under the doctrine of stare decisis, a ruling of a superior court is binding on an inferior court, and an opinion by one judge of a court is binding on other judges of the same court.

> "That, being the rule laid down by this court upon the precise question at issue, was properly adopted by the trial court, and must be followed by us."
>
> Weidman Silk Dyeing Co. *v.* Newark (Sup. Ct. 1913), 91 Atl. Rep. 335 (not officially reported).
>
> "The rule of stare decisis is frequently invoked where a question is presented which has been previously determined in the same court, in which case the rule applies with full force; and it has been held that an opinion of one judge is binding on another judge in the same department of the court." 15 C. J. 919.

It seems almost self-evident that the ruling of a Supreme Court Justice on the very point in the

same case must be accepted and followed by the Circuit Court Judge trying the case. If the same legal question can be brought up again after it is decided, there will be no end. By our rules of practice matters of law may be decided before or at the trial; a party could then present the same motion to strike out as often as he pleases, regardless of the number of times the motions are denied.

POINT 4

ABSENCE OF CONSIDERATION IS A GOOD DEFENSE

At common law, consideration was necessary in order for a promise to be deemed binding.

> "It was a promise without consideration, and void at the common law."
>
> Youngs *v.* Shough (Sup. Ct. 1835) 15 N. J. Law 27.
>
> "A promise without a consideration is void, and the mere circumstance that it is reduced to writing, if there be no consideration, does not make it valid. The design of the statute (of Frauds) was not to prevent contracts, void for want of consideration, from being sustained in courts of justice. Such contracts were not sustained before the statute was made, and it was more than useless to say that they should not be enforced."
>
> Buckley *v.* Beardslee (Sup. Ct. 1819) 5 N. J. Law 570.

A guaranty is not a legal obligation unless there be consideration.

> "There does not appear any consideration for the promise on which this action is founded; it is at best, a naked promise to warrant

the plaintiff against a suit brought against him, by a third person; from a naked promise, no action arises; the consideration moving to the promise must appear."

Shepherd *v.* Layton (Sup. Ct. 1810) 3 N. J. Law 618.

"We have nothing but the written promise of the defendant's intestate to pay the debt of another, and that has no legal validity since there is no evidence of consideration outside of the promise itself."

Schaus *v.* Henry (E. & A. Ct. 1916), 89 N. J. Law 607.

The trial judge based the overruling of this defense on the ground that the guaranty itself recites a consideration (p. 76, l. 37), which is "one dollar —and for other good and valuable consideration." (p. 6, ll. 13 to 19).

But recitals of consideration in a written instrument are not conclusive, particularly where (as here) only a nominal consideration is expressed.

"The true consideration of a deed may be shown by parol, though it vary from that expressed."

Morris Canal & Banking Co. *v.* Ryerson (Sup. Ct. 1859) 27 N. J. Law 457, at p. 467.

"The recitals in the deed is not conclusive as to the amount of the consideration.—But the evidence offered and produced cannot be claimed to vary or change even the terms of the consideration named in this deed, for it is expressly stated to be 'in consideration of one dollar and other valuable consideration.'"

Silvers *v.* Potter (Chanc. Ct. 1891) 48 N. J. Eq. 539.

Absence of consideration may be shown orally, even though the instrument recites a consideration.

> "When the defendant received the money he signed a due-bill, which is a written acknowledgement of an indebtedness. The legal import of this instrument cannot be contradicted or varied by oral proof of a different understanding or agreement between the parties at the time it was signed and delivered, but it may be attacked by oral proof for want of consideration."
>
> Eaton *v.* Eaton (Sup. Ct. 1871) 35 N. J. Law 290.
>
> "A surety may generally show by parol evidence the consideration upon which he signed the obligation, and that such consideration failed, without contravening the rule that parol contemporaneous evidence will not be received to affect the operation of a written instrument."
>
> Brandt, Suretyship & Guaranty (3d Ed.) sec. 454.

POINT 5

FAILURE TO NOTIFY THE GUARANTOR RELEASES HER

Notice should be taken that the guaranty in question is not of one or more specific notes, nor is it in a definite amount.

The guaranty here is of notes, "not exceeding the sum of Twenty Thousand Dollars, either made or endorsed by Adolph C. Galm already discounted or which may hereafter be discounted," and recites that it is "a continuing guaranty of the payment" of such notes "up to said sum of Twenty Thousand Dollars" and "until revoked by me in writing" (p. 6).

The guaranty is dated December 19, 1927. The

earliest note set out in the complaint is dated September 17, 1928. During the nine-month period which elapsed, appellant may have forgotten about the guaranty. At any rate, a guarantor is entitled to receive notice of the acceptance of the guaranty, in order that he may protect himself (if he desire and can) by obtaining security from the person primarily liable, or by revoking the guaranty before further credit is extended, or by persuading the debtor to pay the obligation guaranteed.

> "When the guaranty relates only to a single transaction, notice of its acceptance usually conveys to the guarantor knowledge of the extent of his liability; and in such case no other notice is necessary. Where, however, the guaranty is a continuing one, notice of its acceptance does not have this effect. In such case the same reasons which require notice of the acceptance of the guaranty also requires notice of the advances made under it. It has accordingly been held, and is well established, that in the case of a continuing guaranty not only must notice of acceptance be given, but also, within a reasonable time after all the transactions are closed, the guarantor must be notified of the amount due under the guaranty."
>
> Brandt, Suretyship & Guaranty (3d Ed.) sec. 211.

The duty was on respondent to notify appellant of the discounting of each note for which it intended to hold her liable on her guaranty. She should have been notified by the Bank as to how much of the "up to $20,000" she might be called upon to pay. The party holding a guaranty, especially of the nature here, should not be permitted blithely to continue extending credit while the poor soul who

guaranteed the account is lulled, by absence of notice, into forgetfulness of the continuing liability. It is but a small requirement of the law that the guarantee notify the guarantor of the commencement and extent of liability under the guaranty; such notice will, in many cases, result in the person primarily liable paying the debt or securing the guarantor against loss.

POINT 6

APPELLANT WAS ENTITLED TO ASK RESPONDENT IF IT HAD NOTIFIED HER THAT IT WAS EXTENDING CREDIT TO HER HUSBAND.

Elmer W. Boan, note-teller of respondent, was asked on cross-examination if he ever notified Mrs. Galm of the extension of credit to her husband after the guaranty was signed (p. 47, l. 25). Objection was sustained.

On direct examination this witness testified that after the making of the guaranty the credit of Mr. Galm with the Bank was increased by additional loans (p. 38, l. 36 to p. 39, l. 10; p. 43, ll. 20 to 30). Inasmuch as respondent contended that appellant's guaranty covered these loans, it was proper cross-examination to bring out whether or not respondent notified appellant of the extension of credit.

One of the defenses was a denial by appellant of the execution of the guaranty. The giving or failing to give her notice of the notes of Mr. Galm discounted by the Bank would have had an important bearing on the issue of non-execution. In Waln *v.* Waln, 53 N. J. Law 429, this Court held that where the issue is as to the fact of the execution of the instrument, inquiry as to the absence of consideration is proper. Similarly, under such an issue, inquiry as to the absence of notice should be proper.

POINT 7

APPELLANT WAS ENTITLED TO ASK RESPONDENT IF IT HAD PAID HER ANYTHING ON SIGNING THE GUARANTY.

On cross-examination Elmer W. Boan, note-teller of respondent-bank, was asked by appellant if anything was paid to Mrs. Galm at the time the guaranty was signed (p. 48, l. 24). The Court sustained respondent's objection.

On direct examination this witness recited that he explained to Mrs. Galm the contents of the guaranty and that she signed and acknowledged it in his presence (p. 34, l. 39, to p. 38, l. 35). His name appears on the guaranty (p. 7, l. 15). Appellant then could properly cross-examine the witness as to what took place at the time the guaranty was signed, including the question if anything was paid her at that time. This question would tend to test the veracity of the witness as to the details of the meeting to which he testified on direct examination. A party has the right to cross examine on all matters brought out in the direct examination or directly connected therewith.

And, furthermore, appellant by her answer had denied executing the guaranty. The question of consideration became highly important, and appellant should have been permitted to interrogate respondent's officer on that point.

> "We think, therefore, that the defense in this case had the right to investigate the truth of the statement of this release with respect to its consideration—when the issue is as to the fact of the execution of the instrument, as for example, whether the name of the alleged maker of it is forged, or that it was fraudulently obtained by a substitution of paper or

otherwise; in such case an inquiry the absence or the character of the asserted consideration may be shown as an important part of the inquiry. The rule is that the want of consideration cannot be shown for the purpose of destroying the legal effect of the specialty, but that it can be shown to prove that it has no legal existence. In such inquiries the nonexistence of a consideration has always, in every trial of the subject, been considered as a factor of prime important."

Waln *v.* Waln (E. & A. Ct. 1891), 53 N. J. Law 429.

POINT 8

APPELLANT WAS ENTITLED TO ASK RESPONDENT IF IT HAD OBTAINED FROM HER A FINANCIAL STATEMENT WHEN THE GUARANTY WAS SIGNED.

Mr. Boan was asked on cross-examination if he received any financial statement from Mrs. Galm when the guaranty was signed (p. 49, l. 4). Mr. Holweg, cashier of respondent-bank, was asked a similar question on cross examination (p. 58, l. 15). To these, objections were made and sustained.

On direct examination Mr. Boan stated he was present when the guaranty was signed and recited some acts done and things said at the time (p. 34, l. 39, to p. 38, l. 35). And so said Mr. Holweg, whose signature as witness is on the guaranty (p. 54, l. 10, to p. 55, l. 28). It was proper cross examination to ask if the witnesses requested a statement from Mrs. Galm, in order to test their veracity and to bring out details which they may have omitted. When a winess, on direct examination, makes an assertion as to what was said and done on a certain occasion, he can be cross ex-

amined as to whether or not other things were said or done at the time.

The questions were also competent under the issue raised in appellant's answer that she did not execute the guaranty.

The judgment should be reversed.

Respectfully submitted,

Jos. J. CORN & SILVERMAN,

Attorneys and Counsel of
Defendant-Appellant.

New Jersey Court of Errors and Appeals

FIDELITY UNION TRUST COMPANY, a corporation of New Jersey, Plaintiff-Respondent, *vs.* OLA E. GALM, Defendant-Appellant.	On Appeal from Supreme Court.

RESPONDENT'S BRIEF.

Facts.

The appellant executed to the respondent a contract of guaranty, marked Exhibit P-1 (Case, p. 89), as follows:

Newark, N. J. Dec. 19, 1927

For and in consideration of the sum of One Dollar to me in hand paid by Fidelity Union Trust Company, Citizens Branch of Newark, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I hereby guarantee to said Bank, its successor, successors or assigns, payment at maturity of the bills, notes, checks, or other evidences of debt, not exceeding the sum of Twenty Thousand Dollars, either made or endorsed by Adolph C. Galm already discounted or which may hereafter be discounted by said Bank for the said Adolph C. Galm together with all legal or other expenses of or for collection; demand of payment and notice of protest waived.

And I hereby declare this guaranty to be a continuing guaranty of the payment of such bills, notes, checks, or other evidences of debt,

up to said sum of Twenty Thousand Dollars either made or endorsed by said Adolph C. Galm until revoked by me in writing and a copy of such revocation delivered to said Bank.

OLA E. GALM

In the Presence of:
C. W. HOLWEG

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

On the 19th day of Dec in the year One Thousand Nine Hundred and Twenty-seven before me personally came OLA E. GALM to me known and known to me to be the individual described in, and who executed the foregoing instrument and she duly acknowledge.... that she executed the same.

ELMER W. BOAN
Notary Public of New Jersey
My Commission Expires May 11, 1930

(Notarial Seal)

At the time of the execution of the above guaranty, said Adolph C. Galm was indebted to the respondent bank on notes in the sum of $19,300 (p. 38), and these notes were renewed from time to time and additional notes were made or endorsed by said Adolph C. Galm for which corresponding credit was given by the respondent, so that the sum total of all the notes made or endorsed by the said Adolph C. Galm finally amounted to the principal sum of $33,300 (p. 43). All of these notes were duly protested for nonpayment (p. 59) and all have been put in evidence. As none of these notes was paid, the respondent brought suit against the appellant in the New Jersey Supreme Court upon her guaranty. The appellant, in her answer, denied the allegations of the complaint and also presented four separate defenses, the first and second of which

were, on respondent's motion, ordered struck out and the fourth sustained. The case was tried before a jury and the respondent obtained a judgment for the full amount of the guaranty, together with interest.

POINT I.

All provisions of our Married Women's Act are embraced within its title as it now exists and has existed since the revision of 1874.

Appellant seeks to reverse the judgment recovered against her, and one reason alleged therefor is that the title to our married women's act is not sufficiently comprehensive as to justify the legislature in including in the act the removal of her common law limitation to contract generally. The title to the act as it now exists and has existed since 1874 is as follows: "An Act to amend the law relating to property of married women."

We submit that the title to the act is broad enough to include the removal of such limitation.

This Court in the case of *Boorum* v. *Connelly,* 66 N. J. L. 197, in dealing with a statute, the constitutionality of which had been challenged under Article IV, Section 7, Placitun 4, says:

> "In giving effect to this clause of the constitution the courts *give paramount consideration to the general object of the act.* The general object of the act being ascertained, the legislature may include in it provisions of multiform character, designed to carry into execution the legislative purpose, which are not inconsistent with or foreign to the general object of the act."

From the Act of 1874 it clearly appears that the purpose of the legislation was to give to married

women (with limitations in certain cases) the rights and privileges of unmarried women.

The provisions of said Act of 1874 may be summarized as follows:

Section 1 thereof provided that the property of a woman who married after July 4, 1852, should be her sole property "as if she were a single woman".

Section 2 thereof provided that the real and personal property of any married women, should be her sole and separate property "as if she were unmarried", subject to the debts of her husband contracted by legal lien prior to July 4, 1852.

Section 3 thereof provided that her real and personal property, acquired after July 4, 1852, should be her sole and separate property "as though she were a single woman".

Section 4 thereof provided that her earnings should be her separate property as though she were a single woman.

Section 5 thereof provided, "That any married woman shall, after the passage of this act, have the right to bind herself by contract in the same manner and to the same extent *as though she were unmarried,* which contract shall be legal and obligatory and may be enforced, in law or in equity, by or against such married woman in her own name apart from her husband; provided that nothing herein shall enable such married woman to become an accommodation endorser, guarantor or surety, nor shall she be liable on any promise to pay the debt, or answer for the default or liability, of any other person".

Section 6 thereof authorized a married woman to convey her property where her husband is insane or in prison, "with like effect as if she were sole and unmarried; but such sale or conveyance or release shall not affect any estate or right her husband may then have in such property".

Section 7 thereof authorized her to enter into covenants of title or warranty where she, with her husband, had conveyed her lands.

Section 8 thereof authorized her to acquire property in any manner and to give valid receipts therefor.

Section 9 thereof authorized her to make a will "as if she were * * * an unmarried woman", reserving to the husband his right of curtesy, if any, in her lands.

Section 10 thereof relieved the husband from her debts and made her liable to be sued "in the same manner as if she were unmarried".

Section 11 thereof authorized her to sue without joining her husband and gave to her "the same remedies for the recovery and possession of such property as if she were an unmarried woman".

Section 12 thereof made judgments obtained against her valid and effectual "as if such judgment * * * were against an unmarried person".

Section 13 thereof recognized ante-nuptial agreements.

Section 14 limited the right of a married woman to convey her real estate without her husband joining in the conveyance therefor.

Section 15 thereof relieved her property from liability for debts of her husband.

Section 5 of said act was amended in 1927 to read as follows:

> "5. That any married woman shall, after the passing of this act, have the right to bind herself by contract with any person in the same manner and to the same extent as though she were unmarried; which contract shall be legal and obligatory and may be enforced, at law or in equity, by or against such married woman, in her own name, apart from her husband."

Since it clearly appears from said act that the general object thereof was to confer upon married women the property rights of single women, the imposition upon them of the liabilities of single women is necessarily so related and incident to the general object of the act as to exclude it from the constitutional interdict which prohibits the intermixing of such things as have no proper relation to each other.

In *Boorum* v. *Connelly, supra,* this Court said (p. 209):

> "It is only in a plain case that a statute will be declared void because its title does not express the object of the law. *State, ex rel. Richards* v. *Hammer,* 13 Vroom 435. In the case last cited, in a statute under the title of 'An act relating to the assessment and revision of taxes in cities of this state', it was held to be competent to include provisions changing the mode of appointing members of boards of assessment and revision. Where the subject of legislation is of a general character, all matters reasonably connected with it, which are appropriate to accomplish or facilitate the object of the act, may be embraced in it without infringing the constitutional interdict which prohibits the intermixing of such things as have no proper relation to each other. *In re Commissioners of Elizabeth, supra.* 'The constitutional requirement that the object of every law shall be expressed in its title is satisfied when the title fairly indicates the general object of the statute, although it does not indicate the means or method of attaining that object.' *Bumsted* v. *Govern,* 18 Vroom 368."

In *Van Riper* v. *North Plainfield,* 43 N. J. L. 349, Mr. Justice Dixon, speaking for the Supreme Court, says (p. 350):

> "It seems to be well settled that the title of an act is not objectionable for its general-

> ity, so long as it fairly points out the subject of the legislation. Said Justice Van Syckel, in *State, ex rel. Walter* v. *Town of Union,* 4 Vroom 350: 'The degree of particularity which must be used in the title of an act rests in legislative discretion, and is not defined by the constitution. There are many cases where the object might, with great propriety, be more specifically stated, yet the generality of the title will not be fatal to the act, if by fair intendment it can be connected with it.' And in *People* v. *Banks,* 67 N. Y. 568, the Court of Appeals, per Allen, J., said: 'It is not allowable, for the purpose of invalidating a law, to sit in judgment upon its title, to determine with critical acumen whether it might not have been more explicit, and so drawn as more clearly and definitely to indicate the nature of the legislation covered by it. The legislature is not subject to judicial control in respect to the form or mode in which the subject of a bill shall be expressed. If it is expressed, the constitution is satisfied.' ''

In *Schmalz* v. *Wooley,* 57 N. J. E. 303 (at p. 307), Mr. Justice Dixon, speaking for this Court, says:

> ''As was said by Mr. Justice Depue in *Grover* v. *Ocean Grove,* 16 Vr. 399, 404, 'the standard uniformly adopted for determining whether the legislature has complied with the constitutional requirement is whether the title of the act is such that by it the members of the legislature are informed of the subject to which the act relates and the public notified of the kind of legislation that is being considered'.''

In *Grover* v. *Trustees of Ocean Grove Camp-Meeting Assoc.,* 45 N. J. L. 399 (at p. 403), Mr. Justice Depue, speaking for the Supreme Court, says:

> ''No particular form has been framed for the expression of the legislative purpose in

> the title of an act. As was said by Mr. Justice Miller, 'the constitutional provision referred to does not require that the title should be exact and precise in all respects; it is a sufficient compliance with its terms if this is done fairly and in such a manner as to convey to the mind an indication of the subject to which it relates'. *Matter of App. of Dept. of Public Parks,* 86 N. Y. 437-440; *In re Ferdinand Mayer,* 50 *Id.* 504; *Cooley on Const. Lim.* (144), 173."

In *Bumsted* v. *Govern,* 47 N. J. L. 368 (at p. 373), Mr. Justice Dixon, speaking for the Supreme Court, says:

> "The constitutional provision is that 'every law shall embrace but one object, and that shall be expressed in the title'.
>
> "It is not necessary to review the numerous decisions involving the application of this and similar clauses. It is on all hands agreed that its purpose is to require the title of a bill to be such as will inform the public and the members of the legislature of the object of the enactment, and that this purpose is accomplished when the title fairly indicates the general object, although it does not indicate the means or method of attaining this object. *Grover* v. *Ocean Grove,* 16 Vroom 399; *People* v. *Briggs,* 50 N. Y. 553; *Cooley on Const. Lim.,* 144."

In *Erie R. R. Co.* v. *Public Utility Commissioners,* 89 N. J. L. 57 (Sup. Ct.), it was said (at p. 87):

> "The title of the original act expresses broadly and inclusively the object of the statute; it does not express the means and methods of attaining that object, but this is not required. *Bumsted* v. *Govern,* 47 N. J. L. 368; affirmed, 48 *Id.* 612; *Hickman* v. *State,* 62 *Id.* 499; affirmed, 63 *Id.* 666.
>
> "As was said by this court in *Moore* v. *Burdett,* 62 N. J. L. 163, 164: 'The object of

> a law must not be confused with its product. * * * The object of every law, by force of the constitution must be single and be expressed in the title of the law; the product may be as diverse as the object requires and finds its expression in the terms of the enactment only. In fine, the title of an act is a label not an index.' The statute has, in a constitutional sense, a single object. To attain this object it enacts various methods and matters so related to such object and to each other as to effectuate a single purpose. The inclusion of such inter-related matters is not the intermixing of things that have no proper relation to each other, hence the statute as a whole has a single object. *Payne* v. *Mahon,* 44 N. J. L. 213; *Newark* v. *Mt. Pleasant Cemetery Company,* 58 *Id.* 168."

In *Ringer* v. *Paterson,* 98 N. J. L. 455 (at p. 457), Chief Justice Gummere, speaking for this Court, said:

> "The suggestion is that the title of the present statute is so vague and indefinite that it could not have indicated, either to the members of the legislature that enacted it or to the public generally, a purpose to place upon a municipality located within the territory of a county any part of the cost of a public improvement undertaken by the county; and that much less does it indicate a purpose to place upon property owners within the municipality any part of that portion of the cost of the improvement which is assumed by the city. The mere fact that the object of the legislation might have been expressed more specifically in its title affords no ground for declaring it void, so long as that title fairly points out the general purpose sought to be accomplished thereby. The constitutional requirement is complied with when the title fairly indicates the general object of the statute, although it does not declare the means or methods of attaining that object."

The matter is summed up by Judge Cooley in his book on *Constitutional Limitations,* Sixth Edition, at page 172, as follows:

> "The general purpose of these provisions is accomplished when a law has but one general object, which is fairly indicated by its title. To require every end and means necessary or convenient for the accomplishment of this general object to be provided for by a separate act relating to that alone would not only be unreasonable, but would actually render legislation impossible."
>
> * * * * * *
>
> "The generality of a title is therefore no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection. The legislature must determine for itself how broad and comprehensive shall be the object of a statute, and how much particularity shall be employed in the title in defining it."

It is true that the title of the act of 1874 recited that it was an amendment to the law relating to the property of married women, when, in fact, there had been no previous legislation bearing that title. The title of the original act of 1852 was, "An Act for the better securing of the property of married women". This error, if error it be, does not, however, invalidate the 1874 act and the subsequent acts further amending the same. This question was set at rest in the case of *Schmalz* v. *Wooley, supra,* the Court saying:

> "The title of the act of 1892 is 'A further supplement to an act entitled "An act to protect trademarks and labels" '. That of the act of 1895 is 'An act to amend an act entitled "A further supplement",' &c., quoting the title of the act of 1892. The objection

> urged is that there existed no act entitled 'An act to protect trademarks and labels', and therefore entitling these acts as supplements or amendments of such an act was misleading. But, conceding this, the inquiry is not concluded. The question still remains, was the title misleading as to the object of the act—did not the title, in spite of its false assumption of the existence of a prior statute, fairly express the object of the proposed legislation?
>
> "On reading the act it will be perceived that its object is to protect trademarks and labels, and that for this purpose it is a complete and independent enactment. To express that object in the title no particular form of words is required, nor is it necessary that the object should be expressed with precision. It is enough if the title be so phrased as to inform the legislators and the public of the subject-matter of the act."

Under the doctrine of the last cited case it must appear, then, that the title of the act of 1852 has no present bearing, whether for the purpose of invalidating the legislation subsequent thereto, or of limiting the scope of the enactment clause of the statute now in question.

The appellant under Point I in her brief also questions the intent of the Legislature to change the common law limitation upon the right of a married woman to contract generally. She quotes paragraph 5 of the Revision of 1874; paragraph 5 as amended by the Act of 1895; paragraph 5 as amended by the Act of 1927; and paragraph 5 as amended by the Act of 1929.

It is true that prior to the passage of the 1927 amendment to Section 5 of said act, such section contained a proviso, "that nothing herein shall enable such married woman to become an accommodation endorser, guarantor or surety, nor shall she be liable on any promise to pay the debt, or

answer for the default or liability, of any other person''.

We admit that at common law a married woman could not contract generally, which, of course, would exclude her right to become a guarantor. The married woman's act, until the 1927 amendment thereof, left the common law on the subject of her right to become a guarantor extant. Had the Act, prior to 1927, not included said proviso, the common law would have been abrogated; and by the omission of said proviso in the 1927 amendment such common law rule was abrogated.

The appellant further contends in (b), under her first point, that under Section 15 of the married women's act (3 C. S. 3238) she was not authorized to guarantee the debts of her husband.

It is true that that section of the act provides that the property of a married woman ''shall not be subject to the disposal of her husband, nor liable for his debts''. That paragraph simply abrogated the common law upon that subject. When she guaranteed the payment of his debts, his debts became her debts.

In *12 R. C. L.*, page 1053, it is said that:

> ''Generally a guaranty relates to the payment of a sum of money or the collectability thereof, though it may constitute an assurance of the genuineness of an obligation or the liability of the obligee. Being a collateral engagement for the performance of the undertaking of another, it imports the existence of two different obligations, one being that of the principal debtor and the other that of the guarantor * * *. The guaranty is a separate and independent contract involving duties and imposing responsibilities very different from those created by the original contract to which it is collateral.''

In *Grant* v. *Steenland Construction Co.*, 99 N. J. E. 82, 84, Vice Chancellor Backes says:

> "The complainant's guaranty of the bond and mortgage was a separate and independent contract with the holder to pay according to the tenor of the bond and mortgage in the event that the Steenland Company failed to pay. It was collateral to, not a part of, the original obligation of the Steenland Company."

In *Perkins-Goodwin Co.* v. *Hart,* 83 N. J. L. 471, this Court, in dealing with a guaranty in words following, "In consideration of the execution of the within contract by Perkins-Goodwin Company, I hereby guarantee the payment to them on October 20th, 1909, of the sum of $7,000, as provided for by the same", says:

> "This is a direct promise by the defendant to pay the plaintiff in a given event based upon a specified consideration moving from the plaintiff, and is entirely independent of the enforceability of the 'within contract' against the other party thereto. The term 'guarantee' in such a context imports an undertaking to pay in the given event, which is one of its meanings (Webster's New International Dictionary) and not a promise to be answerable for the default of another, which is its technical meaning in an appropriate context."

The appellant further contends in (c) under her first point that since Section 5 of the Act, prior to the passage of the 1929 amendment, authorized her to contract *with any person,* she could not contract with a corporation.

It is the universal rule of law that the term "person" shall include a corporation unless in the context a corporation is expressly or impliedly excluded from the terms thereof (14 Cyc. 64). *State* v. *Lehigh Valley R. R. Co.,* 90 N. J. L. 372, affirmed 94 N. J. L. 171; *Boniewsky* v. *Polish Home of Lodi,* 102 N. J. L. 241, affirmed 103 N. J.

L. 323; *Morrisville Trust Co.* v. *Moon,* 21 Fed. (2d) 716 (Circuit Court of Appeals, Third Circuit). Our statute (*C. S. 1910,* p. 4972, sec. 9) expressly provides for such construction. It is as follows:

> "That whenever, in describing or referring to any person, party, matter or thing, any word importing the singular number or masculine gender is used in any statute, the same shall be understood to include and shall apply to several persons and parties, as well as one person or party, and females as well as males, and *bodies corporate as well as individuals,* and several matters and things as well as one matter or thing, unless it be otherwise provided, or there be something in the subject or context repugnant to such construction."

The 1929 amendment omitting the words "of any person" from the 1927 amendment added nothing to the law.

POINT II.

The guaranty of the appellant extends to all the unpaid notes made or endorsed by Adolph C. Galm to the extent of her guaranty.

The appellant, in her second defense, alleges that the guaranty agreement does not embrace the notes in question because none of them were made or endorsed by Adolph C. Galm on or before December 19, 1927 (the date of the execution of the guaranty). This defense was struck out on respondent's motion.

This contention requires a construction of the agreement of guaranty. The appellant guarantees to the bank payment at maturity of the bills, notes and checks "either made or endorsed by

Adolph C. Galm already discounted or which may hereafter be discounted by said Bank for the said Adolph C. Galm''. The guaranty extends to notes already discounted or thereafter discounted by the bank, thus indicating that the parties clearly contemplate future transactions, and, therefore, the words ''either made or endorsed'' must mean either already made or endorsed or thereaftr made or endorsed in order to harmonize with the past, present and future operation of the discount feature. Any other interpretation would defeat the plain intention of the parties as expressed in the agreement.

However, it is not necessary to construe and interpret the instrument. The appellant recites in the second paragraph, ''I hereby declare this guaranty to be a *continuing guaranty* of the payment of such bills, notes, checks, or other evidences of debt''. In 28 C. J. 897, it is said:

> ''A continuing guaranty is one which is not limited to a single transaction, but which contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time; and hence where the continuance of a guaranty is expressly limited, it is not a continuing guaranty. It is prospective in its operation and is generally intended to provide security in respect to future transactions within certain limits, and contemplates a succession of liabilities, for which, as they accrue, the guarantor becomes liable.''

And in *12 Ruling Case Law,* at page 1061, it is said:

> ''A continuing guaranty is one which is not limited to a particular transaction or specific transactions, but which is intended to cover future transactions.''

In the case of *Grob & Co.* v. *Gross,* 83 N. J. L. 430 (Sup. Ct.), the opinion discusses a continuing

guaranty and states that such a guaranty contemplates a series of future transactions. At page 432 the Court said:

> "Under the adjudicated cases of this state the guarantee was a continuing one. *Columbia Electrical Co.* v. *Kemmet,* 38 Vroom 18; *Newcomb* v. *Gloeblen,* 48 Id. 791. It is equally clear that the guarantee was revocable.
>
> "Speaking of this class of guarantees, Lush, L. J., in *Lloyds* v. *Harper,* 16 Ch. Div. 319, says: 'Instances of the second class are more familiar. They are where a guarantee is given to secure the balance of a running account at a banker's, or a balance of a running account for goods supplied. There the consideration is supplied from time to time; and it is reasonable to hold, unless the guarantee stipulates to the contrary, that the guarantor may at any time terminate the guarantee. He remains answerable for all the advances made, or all the goods supplied upon his guarantee, before the notice to determine it is given; but at any time he may say, "I put a stop to this; I do not intend to be answerable any further; therefore, do not make any more advances, or supply any more goods, upon my guarantee." As at present advised, I think it is quite competent for a person to do that where, as I have said, the guarantee is for advances to be made or goods to be supplied, and where nothing is said in the guarantee about how long it is to endure.' *20 Cyc. 1479, and cases there cited.*"

The cases of *Columbia Electrical Supply Company* v. *Kemmet, et al.,* 67 N. J. L. 18 (Sup. Ct.), and *Newcomb* v. *Kloeblen,* 77 N. J. L. 791 (Ct. of E. & A.), quoted in the above excerpt, both assume that a continuing guaranty covers a series of future transactions. The instruments sued upon in these cases did not recite that they were continuing and the question involved in each case was whether the instruments in question could be con-

strued as such, and in each case the Court held that they were.

The recital in the instrument in question that it is a continuing guaranty, therefore, conclusively indicates the intention of the parties that it was to cover all future notes made or endorsed by Adolph C. Galm until such time as the appellant should give the bank a written revocation.

POINT III.

Whether the Trial Court was or was not bound by the ruling made on a motion to strike out appellant's third and fourth defenses is not involved in this case.

Her third defense was that there was no consideration for the making of the guaranty. She refers in her brief to Case, page 76, line 35. An examination of the State of Case from page 75, line 37, to page 76, line 40, shows that the ruling of which she complains was on her attempt to prove that no consideration passed to her.

This was no defense. It was not necessary that the consideration should move to her.

In *Garland* v. *Gaines,* 49 Atl. 19 (Conn.), the Court said:

> "It is true, there must have been a legal consideration for the contract of guaranty, but such consideration need not have moved from the plaintiff to the defendant."

In *H. P. Moore Lumber Co.* v. *Walker,* 110 Va. 775, 67 S. E. 374, the Court said:

> "The consideration for the guaranty was clearly sufficient. The testimony of the plaintiffs shows that they had declined to make further advances for the lumber company

> and were induced to do so by Cake's guaranty and the arrangement made by him through his agent, Hockaday Moore."

In *Union Bank* v. *Coster's Executors,* 3 N. Y. 203 (at p. 209), the Court says:

> "Contracts of guaranty differ from other ordinary simple contracts only in the nature of the evidence required to establish their validity. * * * Hence the consideration which will support a contract of this character, as in other cases, may consist in some benefit to the promisor, or some other person at his request, or some trouble or detriment to the promisee (*20 Wend.,* 184, 201; *Theobald on Pr. & Surety,* 3, 4; 2 H. Bl. 312)."

In *Voullaire* v. *Wise,* 44 N. Y. S. 510, 10 Misc. Rep. 659, the Court said:

> "There is sufficient consideration to support the guarantee. It has been invariably held that, where a promise that a guarantor will become liable is part of the inducement on which the creditor acts in creating the original debt, this is a sufficient consideration to support the contract of the guarantor who subsequently signs. The credit given to the principal debtor forms the consideration for the guaranty."

In *Irving National Bank* v. *Ellis,* 74 N. J. L. 42, 64 Atl. 1071, the guarantor was a married woman. One of the questions was whether the contract had been accepted in New York or in New Jersey, the defendant then being incapable of executing such a guaranty in this State. The Court held that the contract became complete, not when the guaranty was mailed to the party guaranteed, but when the latter party acted upon it, and indicated that the making of loans to the principal debtor upon the strength of the guaranty was sufficient consideration. The Court said (at p. 44):

> "We think the guarantee of Mrs. Ellis first became a valid contract in the State of New York when the bank acted upon it and accepted it, and made loans to A. J. Ellis & Company after the receipt and acceptance of it.
>
> "Under this view of the law it becomes unnecessary to consider whether it was error in the trial judge to refuse to submit to the jury the question of whether the agreement of guarantee was or was not mailed in New Jersey."

Appellant's fourth defense was that respondent did not notify her of the acceptance of the guaranty. She refers in her brief to Case, page 60, line 25, to page 61, line 15, and to page 77, lines 3 to 13. From an examination thereof it appears that the question addressed to her was, "Q. Mrs. Galm, did you get any notice from the Fidelity Union Trust Company?" This was no defense. It appears from the testimony of Mr. Holweg (Case, p. 53, ll. 9 to 25) and from the testimony of Mr. Boan (p. 37, ll. 24 to 38), that the guaranty was signed by appellant at a branch banking office of respondent.

Where, as here, the guaranty is executed and delivered at the place of business of the one guaranteed, the retention is notice to the guarantor of the acceptance thereof.

In *New Haven County Bank* v. *Mitchell,* 15 Conn. 206, the Court, in disposing of the question of notice of acceptance, said (at p. 218):

> "A party giving a letter of guaranty has a right to know whether it is accepted; and whether the person to whom it is addressed means to give credit on the footing of it or not. * * * Now it is very obvious, that these reasons, which, as applicable to those cases, recommend themselves at once to our approbation, have no place with reference to the contract in the present suit. * * *

> But the present is a contract executed and delivered, formally, and in the ordinary manner. The promise of the defendants imports, on the face of the instrument, to be for a valuable consideration received by them of the plaintiff. The instrument was delivered to the plaintiff, by one of the defendants, being thereunto expressly authorized for and on behalf of both, and simultaneously accepted by the plaintiff. The delivery of the instrument, under these circumstances, was not an incipient step in the formation of the contract, but the result of previous negotiations and agreement, and constituted the very consummation of the contract. It was delivered and received as evidence of the promise of the defendants, induced by their previous reception of the consideration on which it was founded. The knowledge of the defendant, by whose hands it was delivered, was, under the circumstances, the knowledge of both. A formal notice of acceptance, in addition to this, would be an act of supererogation."

Other cases to the same effect are: *Cahuzac & Co.* v. *Samini,* 29 Ala. 288; *Walker* v. *T. & G. Forbes,* 25 Ala. 139, 60 Am. Dec. 498; *Davis* v. *Wells, Fargo & Co.,* 104 U. S. 159, 26 L. Ed. 686; *Bank of Newbury* v. *Sinclair,* 60 N. H. 100; 49 Am. Rep. 307, and *Paige* v. *Parker,* 8 Gray 211.

Mr. Holweg, one of the respondent's witnesses, on direct examination testified (Case, p. 53, l. 10 to p. 55, l. 35) that prior to the execution of the guaranty, Mr. Galm maintained a line of credit with the bank, and that he needed some more money, and he was informed by the bank that he could not get additional credit or continue the same as it was unless additional collateral was given. Mr. Galm suggested that the bank take the guaranty of his wife (the appellant), which the bank agreed to do, and in furtherance of that conference, arrangements were made for her to execute the guaranty in question.

In *Davis* v. *Wells, Fargo & Co., supra,* the Court said:

> "If the guaranty is made at the request of the guarantee, it then becomes the answer of the guarantor to a proposal made to him, and its delivery to or for the use of the guarantee completes the communication between them and constitutes a contract."

In *Hartford-Aetna National Bank* v. *Anderson,* 92 Conn. 643, 103 Atl. 845, the Court, in disposing of the defense that the guarantor had not been notified by the guaranteed party that it accepted him as a guarantor, said (at p. 846):

> "It is not an offer requiring acceptance, and the circumstances under which it was executed confirm the legal effect of the contract. It was delivered to the bank, not as an offer originating with the guarantor, but in answer to the requirement of the bank that Pierson should procure this very paper to be signed by a responsible guarantor. No doubt the bank reserved the right to reject the guaranty on the ground that the signer was not acceptable, but the whole form and environment of the transaction indicates that the bank invited the execution of a guaranty which, unless rejected for that reason, was intended by both parties to become effective on delivery. We think the defendant, having executed and, by his agent, delivered this specialty to the bank, is in no position to deny that he intended the bank to accept it and act upon it at once and without notice."

The appellant contends that the refusal of the Trial Judge to admit testimony on the question of notice was inconsistent with the ruling of the Chief Justice sustaining the fourth separate defense, but the issue on the pleadings was entirely different from that raised at the trial.

As we have previously pointed out, under some circumstances to be disclosed by the evidence pre-

sented, failure to give notice of acceptance might be a proper defense, but, of course, the facts which determine whether such notice need or need not be given would not appear in the pleadings. On the trial, however, as the facts were developed, it became apparent that the cause fell within the classification of cases where additional notice—notice other than that received by the appellant from the contemporaneous execution, delivery and receipt of the contract—is not required, since it would be an act of supererogation.

POINT IV.

There was a consideration for appellant's guaranty.

The respondent discounted additional notes for said Galm. Furthermore, the guaranty recited a consideration.

In *Davis* v. *Wells, Fargo & Co.*, 104 U. S. 159, the Court said:

> "It is not material that the expressed consideration is nominal. That point was made, as to a guarantee, substantially the same as this, in the case of *Lawrence* v. *McCalmont*, 2 How. 452, and was overruled. Mr. Justice Story said:
>
> " 'The guarantor acknowledged the receipt of the one dollar and is now estopped to deny it. If she has not received it, she would now be entitled to recover it. A valuable consideration, however small or nominal, if given or stipulated for in good faith, is, in the absence of fraud, sufficient to support an action on any parol contract; and this is equally true as to contracts of guarantee as to other contracts. A stipulation in consideration of one dollar is just as effectual and valuable a consideration as a larger sum stipulated for

or paid. The very point arose in *Dutchman* v. *Tooth,* 5 Bing. (N. C.) 577, where the guarantor gave a guaranty for the payment of the proceeds of the goods the guarantee had consigned to his brother, and also all future shipments the guarantee might make in consideration of two shillings and sixpence paid him, the guarantor. And the Court held the guaranty good, and the consideration sufficient.'

* * * * * *

"It does not affect the conclusion, based on these views, that the present guaranty was for future advances as well as an existing debt. It cannot, therefore, be treated as if it were an engagement, in which the only consideration was the future credit solicited and expected. The recital of the consideration paid by the guarantee to the guarantor shows a completed contract, based upon the mutual assent of the parties; and if it is a contract at all, it is one for all the purposes expressed in it. It is an entirety, and cannot be separated into distinct parts. The covenant is single, and cannot be subjected in its interpretation to the operation of two diverse rules."

POINT V.

The respondent was under no obligation to notify appellant of the indebtedness of said Galm.

The guaranty did not by its terms require respondent to give appellant any notice of the discount of notes made or endorsed by Adolph C. Galm.

Appellant, in the fifth point of her brief, seems to have confused notice of acceptance with notice of each transaction arising under the guaranty. In this connection, attention is invited to the ap-

pellant's defense that no notice of *acceptance* was given. Her objection on the ground that she was not informed of all the transactions is inconsistent with her original defense. Apart from the appellant's variance from her alleged defense, she cites no authority whatever for the proposition on page 21 of her brief that it was the duty of the respondent to notify her of each transaction. The quotation from Brandt, Suretyship & Guaranty, on the same page, is to the effect merely that after all the transactions are closed, the guarantor must be notified within a reasonable time of the amount due, not that she is entitled to notice of each transaction. In the cases of *Walker* v. *T. & G. Forbes, supra,* and *American Woolen Co.* v. *Moskowitz,* 144 N. Y. S. 532, 159 App. Div. 382, the courts distinctly said that once the transaction was closed, it was the duty of the guarantor to inquire and ascertain what had been done. If the guarantor is dissatisfied, he always has the remedy of revoking the guaranty and thereby preventing further credit being advanced on the strength of the same.

POINT VI.

Appellant was not entitled to ask respondent if it had notified her that it was extending credit to her husband.

We have met the contention of appellant raised by Point VI of her brief by Points III and V of our brief.

POINT VII.

Appellant was not entitled to ask respondent if it had paid her anything on signing the guaranty.

This was no defense. It was not necessary that a consideration should move to her. The consideration was the discounting of notes made or endorsed by her husband, Adolph C. Galm.

Authorities upon this point are cited in Points III and IV of our brief.

POINT VIII.

Appellant was not entitled to ask the respondent if it had obtained from her a financial statement when the guaranty was signed.

This clearly was no defense.

We respectfully submit that the judgment of the Supreme Court should be affirmed.

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New Jersey Court of Errors and Appeals

(No. 57, October 1931 Term.)

FIDELITY UNION TRUST COMPANY, *Plaintiff-Respondent,* *vs.* OLA E. GALM, *Defendant-Appellant.*	*On Appeal from Supreme Court.*

APPELLANT'S REPLY BRIEF.

Respondent, in its brief, has raised matters which appellant did not anticipate.

POINT 1.

The Married Woman's Act is a good defense.

(a) *Appellant could not become guarantor.*

Where a statute fairly admits of two constructions, of which one will and the other will not violate the provisions of the Constitution, the latter construction is to be adopted.

> "The title of an act of the legislature constitutes a limitation upon the enacting clauses, and any construction of the latter that will give them a scope beyond the object expressed in the title is to be rejected."
> *Jordan* v. *Moore* (E. & A. Ct. 1911), 82 N. J. Law 552.

Our Constitution provides (Art. 4, sec. 7, pl. 4):

> "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

The act in question is entitled "An Act to Amend the Law Relating to the Property of Married Women," passed in 1874. There was no act entitled "Law Relating to the Property of Married Women." The only prior statute on the subject was "An Act for the Better Securing of the Property of Married Women," passed in 1852; a reading of the 1852 and 1874 acts shows clearly that the former was intended to be amended by the latter, for the provisions of the 1852 statute are incorporated almost verbatim into that passed in 1874.

Section 5 of the act, as it existed on Dec. 19, 1927 (when the guaranty here involved was alleged to have been signed by appellant and on which date she was a married woman), read:

> "That any married woman shall, after the passing of this act, have the right to bind herself by contract with any person in the same manner and to the same extent as though she were unmarried, which contracts shall be legal and obligatory, and may be enforced at law or in equity, by or against such married woman, in her own name, apart from her husband."

If this section does not remove the common-law disability of a married woman to become guarantor, appellant is not liable on the guaranty. Respondent in its brief (p. 12, top) admits that this common-law disability remained extant until the 1927 amendment above quoted.

The title of the 1852 and 1874 acts must be read together, for one is an amendment of the other, so that the latter statute should be entitled "An Act to Amend an Act for the Better Securing of the Property of Married Women." It is too plain for argument that the legislature in the 1874 enactment intended to amend the

1852 act; respondent appears to concede that the title of the later act was an error (Respondent's Brief, p. 10, middle).

But whether the title be "For the Better Securing of the Property of Married Women" or "Relating to the Property of Married Women," this statute is necessarily restrictive in scope to matters concerning the property of married women. Any foreign provisions, including consideration of the property of others than married women and consideration of married women other than as to their property, is prohibited by the Constitution and therefore void.

Since the body of an act must be interpreted in the light of its title, section 5 must be construed to mean that a married woman has the right to bind herself by contract *relating to her property* to the same extent as though she were unmarried. Any construction to the effect that she is bound by contracts which do not relate to her property would make the act unconstitutional because the object is not expressed in the title.

The Constitutional requirement is to enable the public readily to ascertain the nature of the statute by its title; for otherwise one would be compelled to wade through the entire body of every statute in order to find the law on any matter, and would receive no assistance from the title.

> "The purpose of this provision is plainly twofold; first, to insure a separate consideration for every subject presented for legislative action; second, to insure a conspicuous declaration of such purpose."
>
> *Rader* v. *Union* (Sup. Ct. 1877), 37 N. J. Law 509.

> "The constitutional provision was meant to prevent the concealment of the real object

of the act and what is commonly called log-rolling. The incongruity of the object of a statute in its application to the facts must depend on the existing state of the law, and the object expressed in the title must give notice of the effect of the legislation to one conversant with the existing state of the law, and we may add existing customs of the people and habits, so to speak, of the language."

Hulme v. *Trenton* (Sup. Ct. 1920), 95 N. J. Law 30.

Where a title is restrictive in scope, the body of the act must be limited within the confines of the title.

"The legislature may make the title of an act as restrictive as they please, and they may sometimes so frame it as to preclude many matters which might, with entire propriety, have been embraced in one enactment with the matters indicated by the title, but which must now be excluded because the title has been made unnecessarily restrictive. The constitution has made the title the conclusive index to the legislative intent; and it is no answer to say that the title might have been made more comprehensive, if the legislature had not seen fit to make it so."

Grover v. *Ocean Grove* (Sup. Ct. 1883), 45 N. J. Law 399.

Here follows some of the statutes held invalid by our Courts as to the objects set forth, because the object was broader than the title:

Title: "An Act in Relation to Streets in Union Township." Object: Incorporating commissioners with power to lay out parks as well as streets.

Rader v. *Union,* 39 N. J. Law 509, *supra.*

Title: "An Act to Provide for Licensing Boats, Hacks and Other Vehicles by Incorporated Camp-Meeting Associations or Seaside Resorts, and for the Better Government of the Same." Object: Licensing, regulat-

ing or prohibiting manufacture or sale of liquor.

Grover v. *Ocean Grove,* 45 N. J. Law 399, *supra.*

Title: "An Act to Prevent the Adulteration and to Regulate the Sale of Milk." Object: Prohibiting production of impure milk by other means than by adulteration, without regard to the existence of an intent to sell the same.

Shivers v. *Newton* (Sup. Ct. 1883), 45 N. J. Law 469.

Title: "An Act to Transfer the Charge and Keeping of the Jails and the Custody of Prisoners in the Counties of Essex and Hudson, from the Sheriff to the Board of Chosen Freeholders, etc." Object: Transferring the charge and keeping of the jails and the custody of prisoners in more counties than Essex and Hudson from the sheriff to the freeholders.

Daubman v. *Smith* (Sup. Ct. 1885), 47 N. J. Law 200.

Title: "An Act to Reorganize the Local Government of Jersey City." Object: Validating certain claims for work done for the city in an illegal mode.

Jersey City v. *Elmendorf* (E. & A. Ct. 1885), 47 N. J. Law 283.

Title: "An Act Constituting Courts for the Trial of Small Causes." Object: Relating to criminal procedure.

Lane v. *State* (E. & A. Ct. 1887), 49 N. J. Law 673.

Title: An act relating to "writs of error." Object: Authorizing the removal of decisions, on motions for new trials, by writs of error.

Falkner v. *Dorland* (Sup. Ct. 1892), 54 N. J. Law 409.

Title: "An Act to Authorize the Formation of Railroad Corporations and to Regulate the Same." Object: Reduction of capital stock of railroad companies.

N. Y. & Greenwood Lake Ry. Co. v. *Montclair* (E. & A. Ct. 1890), 47 N. J. Eq. 591.

Title: "An Act to Tax Intestates' Estates, Gifts, Legacies and Collateral Inheritance in Certain Cases." Object: Taxing real estate devised.

Grossman v. *Hancock* (Sup. Ct. 1895), 58 N. J. Law 139.

Title: "An Act to Incorporate Benevolent and Charitable Association." Object: Authorizing contracts of ordinary life insurance.

Golden Star Fraternity v. *Martin* (E. & A. Ct. 1896), 59 N. J. Law 207.

Title: "An Act Concerning Inns and Taverns." Object: Making a misdemeanor the sale of intoxicating liquor from any "ambulatory conveyance."

Mack v. *State* (Sup. Ct. 1896), 60 N. J. Law 28.

Title: "An Act to Provide for the Regulation and Incorporation of Insurance Companies." Objects: Regulating business of individual insurers.

Schenck v. *State* (Sup. Ct. 1897), 60 N. J. Law 381.

Title: "An Act to Provide for the Review, by Justices of the Supreme Court of this State, of Summary Convictions, etc." Object: Conferring on judge of Common Pleas Court the same powers as given to Supreme Court Justices to review summary convictions.

Plainfield v. *Hall* (Sup. Ct. 1898), 61 N. J. Law 437.

Title: "An Act Respecting the Employment of Honorably Discharged Union Soldiers, Sailors and Marines in the Public Service of the State of New Jersey." Object: Regulating public offices in the several cities, counties, towns or villages of the State.

Hardy v. *Orange* (E. & A. Ct. 1899), 61 N. J. Law 620.

Title: "An Act to Increase the Jurisdiction of Justices of the Peace." Object: Making it a penal offense for any justice of the peace to issue a summons on behalf of any person for whom he is agent.

Hayes v. *Storms* (Sup. Ct. 1900), 64 N. J. Law 514.

Title: "An Act Relating to Certain Illegal Borough Governments, Requiring the Payment of their Debts." Object: Creating boroughs.

Cooper v. *Springer* (Sup. Ct. 1900), 65 N. J. Law 161.

Title: "An Act to Establish Excise Department in Cities of this State." Object: Establishing excise departments in towns.

Hann v. *Bedell* (Sup. Ct. 1901), 67 N. J. Law 148.

Title: "An Act to Provide a Uniform Procedure for the Enforcement of all Laws Relating to Fish, Game and Birds, and for the Recovery of Penalties for Violation thereof." Object: Imposing and increasing penalties.

Hawkins v. *American Copper Co.* (Sup. Ct. 1903), 69 N. J. Law 126.

Title: "An Act Concerning District Courts." Object: Declaring or changing the relative rights of landlords and tenants.

Jonas Glass Co. v. *Ross* (Sup. Ct. 1902), 69 N. J. Law 157.

Title: "An Act to Authorize Cities in this State to Purchase Lands and Erect Suitable Buildings for City Purposes and to Sell Lands and Buildings now Used for such Purposes." Object: Authorizing condemnation of lands.

Griffith v. *Trenton* (Sup. Ct. 1908), 76 N. J. Law 23.

Title: "An Act to Tax Intestates' Estate, Gifts, Legacies, Devises and Collateral Inheritance in Certain Cases." Object: Imposing tax upon the transfer of property which is the subject of a bequest.

Dixon v. *Russell* (E. & A. Ct. 1910), 79 N. J. Law 490.

Title: "An Act to Enable the Owners of Tide Swamps and Marshes to Improve the same, and the owners of Meadows already Banked and held by Different Persons to Keep the same in Repair." Object: Relieving owners of banked meadows from the obligation to keep same in repair.

Cox v. *American Dredging Co.* (Sup. Ct. 1910), 80 N. J. Law 645.

Title: "An Act to Regulate the Terms of Office of the City Treasurer and City Surveyor or Engineer in certain Cities of this State." Object: Fixing the method of selecting such officers.

Wilson v. *Smith* (Sup. Ct. 1911), 81 N. J. Law 132.

Title: "An Act to Regulate and Control the business of making Loans, etc." Object: Fixing a minimum annual license fee of $500—because it thereby becomes a taxing or revenue raising statute.

Bolles v. *Newark* (Sup. Ct. 1911), 81 N. J. Law 184.

Title: An act for the taxation of street railroad corporations. Object: Making the

provisions applicable to street railway systems.

Atlantic City & S. R. Co. v. *State Board of Assessors* (E. & A. Ct. 1916), 88 N. J. Law 219.

Title: "An Act Directing the Descent of Real Estate." Object: Abolishing estates of dower and curtesy.

Reese v. *Stires* (Chanc. Ct. 1917), 87 N. J. Eq. 32.

Title: "An Act to Prescribe the Conditions and Restrictions under which Public Vaults, Crypts or Mausoleums for the Interment of Human Bodies are Constructed, and fixing Penalties for Failure to Comply therewith." Object: Exempting such structures from taxation.

Totowa v. *State Board of Taxes* (E. & A. Ct. 1919), 92 N. J. Law 646.

Title: Enumerates acts mentioned as nuisances. Object: Adding thereto habitual unlawful sale of intoxicants.

Hedden v. *Hand* (E. & A. Ct. 1919), 90 N. J. Eq. 583.

Title: "An Act Respecting Proceedings in Certain Criminal Cases." Object: Fixing recorder's salary.

Stockhouse v. *Camden* (E. & A. Ct. 1921), 96 N. J. Law 533.

Title: "An Act for the Punishment of Crimes." Object: Declaring void marriages contracted in those circumstances which constitute a misdemeanor.

Robbins v. *Lanning* (Chanc. Ct. 1922), 93 N. J. Eq. 362.

The legislature has restricted the objects of the act in question to those relating to the *property of married women,* by so restricting the title. It was within the province of the legis-

lature, had it so desired, to legislate on all matters concerning married women (including making of guarantees regardless of her property), provided it did not preclude itself by narrowing the title of the act. By limiting the title to "property of married women," the objects were limited to the same extent.

> "The constitutional mandate that the object of every law shall be expressed in its title has given the title of an act a twofold effect. It has added additional force to the title, as an indication of legislative intent, in aid of the construction of a statute couched in language of doubtful import, and it also operates as a constitutional limitation upon the enacting part of the law. The enacting part of a statute, however clearly expressed, can have no effect beyond the object expressed in the title. To maintain any part of such a statute, those portions not embraced within the purview of the title must be exscinded; and, if the superaddition to the declared object cannot be separated and rejected, the entire act must fall."
>
> *Dobbins* v. *Northampton*, (Sup. Ct. 1888) 50 N. J. Law 496.

> "The title of the act of March 26, 1902, however, does not disclose a purpose to legislate, generally, with relation to the boards of freeholders of the several counties of the state, but specifically with respect to the number of members of which such boards shall be composed, the compensation which they shall receive, and the time and method of their election, and, consequently, restricts the enacting part of the statute to these three subject-matters, and, matters cognate thereto * * * In order to make the legislation valid, the title must be broad enough to express the general object sought to be accomplished; for, under the constitution provision, the title is not only an indication of the legisla-

> tive intent, but is also a restriction upon the enacting part of the law."
>
> *Patterson* v. *Close* (Sup. Ct. 1912), 82 N. J. Law 160.

The Court should so construe a Statute as to include only the objects expressed in the title, and if such construction is not possible the Statute must be held invalid. In the instant case it is entirely possible to construe section 5 in the light of the title: a married woman may contract as though she were unmarried, with relation to her property.

> "Where in the title of an act, an enumeration of words of specific significance are followed by words of general import, the latter are ordinarily to be understood as limited to things of like kind to the ones specifically mentioned."
>
> *Curtis & Hill Gravel & Sand Co.* v. *State Highway Com.* (Chanc. Ct. 1920), 91 N. J. Eq. 421.

It would seem that every contract relates to the property of the persons entering into the same, excepting promises to answer for the default of another in which no consideration moves to the person so promising. In a contract to buy, sell, build, hire, lease, or of agency, partnership, bailment, etc., the physical property of the parties is exchanged or modified. Buyer and seller exchange money and tangible property. Landlord and tenant exchange money and use of property. Employer and employee exchange money and services. Partners pool their property and services. So that, in referring to contracts of married women, other than as accommodation endorser, guarantor or surety, there was perhaps no need of qualifying the contracts to those "relating to the property of married women."

And our legislature, up to 1927, provided that a married woman could not be an accommodation endorser, guarantor or surety, unless she thereby obtained money, property or other thing of value —which in effect was that she could not engage in such transactions unless they related to her property, for the consideration obtained by her necessarily increased her property. In such case she exchanged a promise on her part for property received by her as consideration for the making of the promise.

The 1927 amendment to section 5 bears no new title, no indication that the benign protection afforded to married women by our system of jurisprudence throughout the ages has been changed. It does not state, either in the title or the body, that a married woman can answer for the default of another, or become accommodation endorser, guarantor or surety, without her obtaining anything of value. How does the guaranty here relate to the property of appellant? She received nothing. Perhaps respondent parted with money, perhaps the maker of the notes received money, but the transaction did not relate to appellant's property. The contract neither increased nor decreased nor modified her property; she was no richer nor poorer a moment after the guaranty was made than the moment before. There is no relationship between such a guaranty and the married woman's property.

Surely the word "property" appearing in the title has some significance. The title cannot be read as if "property" did not appear therein. We must construe the title according to the ordinary meaning of the words constituting it.

> "In determining whether the title of an act expresses its object within the meaning of the clause of the Constitution on that sub-

> ject, there should be attributed to the words used as indicating that object, such meaning as they had then acquired in common and legislative usage."
>
> *State* v. *Twining* (E. & A. Ct. 1906), 73 N. J. Law 683.

"Property" has been defined as "a right or interest which a man has in lands and chattels to the exclusion of others" (2 Bouv. Dict. 387; in re Erie R. R. Co., 65 N. J. Law 608). One would never consider a guaranty made a married woman as her "property." The guaranty may be property of the guarantee but is not property of the guarantor.

> "Under the requirement of the Constitution that the object of an act must be expressed in its title, the true rule is that the object expressed must give notice of the effect of the legislation to one conversant with the existing state of the law. The validity of the title is not to be determined by nice distinctions of etymology or definition of words, but by the facts of the case and the history of the legislation."
>
> *Sawter* v. *Shoenthal* (E. & A. Ct. 1912), 83 N. J. Law 499.

Now taking up the cases cited by respondent:

Boorum v. *Connelly* (E. & A. Ct. 1901), 66 N. J. Law 197, held the title of "An Act Relative to the Election, Appointment and Terms of Office of Officers Elected or Appointed in Certain Cities of the State" embraced changing the time of the election of city officers from spring to fall and extending the terms of office of incumbents until successors could be elected under that act. Since the subject-matter related to the election, appointment and terms of office of the officers, the object was expressed in the title. This Court

there said: "In giving effect to this clause of the Constitution (Art. 4, sec. 7, pl. 4) the Courts give paramount consideration to the general object of the act," meaning the general object as expressed in the title of the act. The general object of the act with which this appeal is concerned is one "Relating to the Property of Married Women": general as to the property of married women, but not general as to property or as to married women.

Van Riper v. *North Plainfield* (Sup. Ct. 1881), 43 N. J. Law 349, held that a provision for a mode of levying assessments in townships is embraced in "An Act in Relation to Assessments in Townships." The title is general in scope and covers all legislation on assessments in townships. The Court there said: "Where the subject of legislation is of a general character, all matters reasonably connected with it, which are appropriate to accomplish or facilitate the object of the act, may be embraced in it without infringing the constitutional interdict," from which is derived the converse—that where the subject is of a restricted character (as the property of married women restricts the legislation concerning married women to matters concerning her property), all matters not reasonably connected with it (as a general guaranty by a married woman) are interdicted by the constitution.

Schmalz v. *Wooley* (E. & A. Ct. 1898), 57 N. J. Eq. 303, held the title of "A Further Supplement to an Act Entitled an Act to Protect Trade-Marks and Labels" embraced the protection of trade-marks and labels. Which is self-evident. This Court there quoted: "The standard uniformly adopted for determining whether the legislature has complied with the constitutional

requirement is whether the title of the act is such that by it the members of the legislature are informed of the subject to which the act relates and the public notified of the kind of legislation that is being considered." Surely neither the legislature nor public can be expected to look for matters which do not relate to the property of married women in an act labelled "An Act to Amend the Law Relating to the Property of Married Women."

Grover v. *Trustees of Ocean Grove* (Sup. Ct. 1883), 45 N. J. Law 399, *supra*, held unconstitutional a statute in question. The Court quoted: "The constitutional provision referred to does not require that the title should be exact and precise in all respects; it is a sufficient compliance with its terms if this is done fairly and in such a manner as to convey to the mind an indication of the subject to which it relates"; and, by its decision voiding the statute, declares that otherwise there is no compliance with the constitutional requirement. The title "Relating to the Property of Married Women" does not convey to the mind that it relates to a guaranty or other contract unconnected with a married woman's property; the title indicates that only the property of married women is being legislated upon.

Bumsted v. *Govern* (Sup. Ct. 1885), 47 N. J. Law 368, held the title of an act "To Make Uniform the Selection and Duties of Directors of the Boards of Chosen Freeholders" embraced the abolition of the peculiar selection and duties of Hudson County directors and the making uniform of their selection and duties with those of the other counties of this State. The title applied to directors generally, and hence affected those of Hudson County. But had the body of

the act referred to the compensation of these directors, or to the selection or duties of bank directors or of county auditors, would the act not have been unconstitutional? A general title can refer to a specific matter, but a restricted title cannot embrace a general matter. So a box marked "Fruit" may properly contain only apples, but a box marked "Apples" would be a misnomer if it contained pears as well as apples.

Erie R. R. Co. v. *Public Utility Com'rs* (Sup. Ct. 1916), 89 N. J. Law 57, was concerned with the first part of the constitution provision—"every law shall embrace but one object"—and not with the second part—"and that shall be expressed in the title," with which portion we are concerned in the instant case. The Court there said: "The title of an act is a label." The label, however, must be correct, otherwise the act is bad. If the label here were "Relating to Married Women," the provisions of section 5 might be constitutionally unassailable. But a label "Relating to Property of Married Women" goes only with matters of property of married women. In a book entitled "Life of Smith" may be found a record of John Smith, but one would not look in a book entitled "Life of Adam Smith" for the biography of John Smith.

Ringer v. *Paterson* (E. & A. Ct. 1922), 98 N. J. Law 455, held the title of "An Act to Amend an Act entitled 'An Act Concerning Counties'" embraced authorizing the assessing of property owners for county improvements. An act which concerns counties is so general in title (label) that in it may properly be found anything concerning counties, including the making of improvements and the payment thereof by property owners benefited.

Cooley on Constitutional Limitations, as quoted by respondent, is the law where and only where the title is general. But where the title, as here, is restrictive, Judge Cooley states the correct rule (Constitution Limitations, 7th Ed., p. 212), as follows:

> "The courts cannot enlarge the scope of the title; they are vested with no dispensing power; the constitution has made the title the conclusive index to the legislative intent as to what shall have operation; it is no answer to say that the title might have been made more comprehensive, if in fact the legislature have not seen fit to make it so."

In its brief (p. 12, top) respondent says: "We admit that at common law a married woman could not contract generally, which, of course, would exclude her right to become a guarantor. The married woman's act, until the 1927 amendment thereof, left the common law on the subject of her right to become a guarantor extant. Had the Act, prior to 1927, not included said proviso, the common law would have been abrogated; and by the omission of said proviso in the 1927 amendment such common law rule was abrogated." Appellant submits that the abrogation of a common law rule, particularly so important a one as prohibits a married woman from becoming a guarantor, should not be eked out from the mere omission of a proviso in a statute. The legislative intent to take so drastic a step should be clearly and openly evidenced by a plain declaration to that effect, embodied in a statute properly labelled with a title conspicuously announcing that fact; and not by taking a statute bearing the name "for the better securing of the property of married women," then calling it "relating to the property of married women," and therein giving her "the right to bind her-

self by contract," and construing this as an abrogation of the common law prohibition against a married woman's guaranty.

At any rate, in this State, the construction of a phase the "Married Woman's Act" made by our Supreme Court in *Van Kirk* v. *Skillman* (34 N. J. Law 109) is still the law. In that case (at p. 115) the Court said it saw nothing in the language of the act expressive of a purpose to permit a married woman to bind herself as surety; that if the legislature had such purpose in mind it would have so stated it in plain language; that the title of the act does not indicate any such object; that the act embraces married women's contracts only when the consideration moves to her, and has no relation to her suretyship or mere collateral obligations.

(b) *Appellant could not guarantee her husband's debts.*

Under section 15 of the Married Woman's Act her property is held to be not liable for her husband's debts. The judgment here is based on a guaranty by appellant of her husband's debts.

Whether a guaranty is independent of the obligation guaranteed, or collateral thereto, or a promise to be answerable for the default of another, its effect is the same—the property of the guarantor becomes liable for the debt guaranteed; on default such liability culminates and the property of the guarantor is taken to satisfy the debt guaranteed.

(c) *Appellant could not guaranty to respondent-corporation.*

Appellant concedes that, in construction of statutes, the word "person" includes a corporation unless in the context corporations are expressly or impliedly excluded from the terms thereof.

Section 5 of the act originally was not limited as to the parties with whom a married woman might contract. In 1895 the section was amended by permitting her to contract "with any person." In 1927 the section was again amended but the phrase "with any person" was retained. In 1929 the section was further amended to the extent only of omitting "with any person."

Thus from 1874 to 1895 a married woman could contract with corporations as well as persons. What other reason could the legislature have had in 1895, when it added "with any person," than to exclude corporations? The same intention was present in 1927 when that phrase was retained. Corporations were impliedly excluded from the provisions of section 5 between the 1895 and the 1929 amendments.

POINT 2.

The guaranty does not embrace the notes in question.

Respondent contends that the words "either made or endorsed" should be read as if they were "either already made or endorsed or thereafter made or endorsed," because these words are followed by "already discounted or which may be discounted by said Bank for the said Adolph C. Galm." But there is no need of departing from the rule of strict construction of

guaranties on this account. The words themselves bear a reasonable construction: Mrs. Galm guarantees all notes now made or endorsed by Mr. Galm which the Bank has now discounted or may hereafter discount. Cannot a bank discount today a note made last month, or discount next month a note made yesterday? The writing expresses a future discounting but not a future making or endorsing of the notes.

Nor does the declaration of continuing guaranty have any bearing, because it applies to such notes "either made or endorsed" and not to any thereafter to be made or endorsed.

POINT 3.

The trial judge was bound by the prior ruling on the third and fourth defenses.

Respondent, in its brief, does not discuss the point made by appellant—that the trial court (Circuit Judge) was bound by the ruling made by the Chief Justice that the third and fourth defenses were good—and so we may assume the proposition is admitted.

But, says respondent, the ruling complained of under the third defense was that she was not permitted to prove that no consideration passed to her, whereas consideration must not necessarily move to the promissor (Respondent's Brief, p. 17).

This occurred at the trial (Case, p. 76, bottom):

> "The Court: Is it your idea that an agreement of guaranty requires a consideration?
> Mr. Corn: Yes, sir.
> (Argument.)

The Court: The defendant admits the consideration in the agreement, and I will overrule that defense.

(Exception noted as ground of appeal.)"

Thus it is evident that the ruling of the court was a striking-out the defense of no consideration. Defendant was thereby precluded from introducing any evidence on this subject.

Had the ruling of the trial court been only a refusal to permit appellant to testify that she received no consideration for the making of the guaranty, such ruling would have been erroneous. On the issue of absence of consideration defendant need only prove that she received nothing, and thereupon the burden shifts to plaintiff to prove either that a consideration moved to defendant or from plaintiff.

The trial judge, in making the ruling, apparently took the view that because the guaranty itself recited a one-dollar consideration, the matter of consideration could not be inquired into.

Appellant, at the trial, testified that she never saw the guaranty until the date of the trial (Case, p. 60, l. 22), that she did not know of its existence until 1929 (p. 61, l. 23), and that she was not in Newark on December 19, 1927 and did not see either Mr. Boan or Mr. Holweg (p. 60, ll. 8 to 18).

Respondent's argument, as to failure to give notice of acceptance of the guaranty (the fourth defense), is on the assumption that defendant executed and delivered the guaranty at the office of plaintiff (which was denied by defendant), and on the further assumption that she delivered the guaranty at the request of the guarantee (which was likewise denied by defendant).

At the point in the trial when the Court refused to permit defendant to be questioned on the

matter of notice of acceptance (p. 60, l. 35), defendant's case had just been commenced with her denial of having been at plaintiff's office on December 19, 1927, and of having seen Mr. Boan and Mr. Holweg, and of having seen the guaranty. So that it cannot be said that the undisputed facts and admissions at that stage of the proceedings disclosed sufficient legal reason to excuse giving of notice. The guaranty could not have been the answer of the guarantor to a proposal made to her by the guarantee, because she denied knowledge of the guaranty or of any proposal made to her by respondent for execution of the guaranty. Neither did the plaintiff's case bring out any proposal to defendant; the evidence introduced by plaintiff could have indicated, at the most, that Mr. Galm suggested that the bank take his wife's guaranty, but there is no proof that this suggestion was communicated to Mrs. Galm.

POINT 4.

Absence of consideration is a good defense.

Recital of consideration in a guaranty is not conclusive.

In *Kosson* v. *Harris* (154 Atl. Rep. 726, not yet officially reported), decided by this Court this year, defendant signed a guaranty two days after the making of the original contract, the guaranty reciting "For Value received." This Court held:

> "The contract and the guaranty were not, in contemplation of law, one and the same agreement. * * * Such a guaranty is strictly construed, and must be supported by a consideration moving to the guarantor or a renunciation of something substantial to the party who is guaranteed, and that something must be more than a mere consent to do what the law requires to be done."

In the instant case the notes guaranteed were not made at the same time as the guaranty, so that the notes and the guaranty were separate undertakings, each of which required the support of a valuable consideration in order to be enforceable. The mere indication in the guaranty of "value received" or a nominal consideration does not preclude defendant from showing that there was no consideration, and, if there was no consideration, the guaranty is unenforceable.

POINT 5.

Failure to notify the guarantor releases her.

Appellant was entitled to notice of the acceptance of the guaranty and to notice of advances made thereunder.

As to notice of acceptance, respondent has cited a number of cases (Respondent's Brief, pp. 19 to 20) which are authority for the requirement of such notice. For instance, in *New Haven County Bank* v. *Mitchell,* 15 Conn. 206, the Court said:

> "A party giving a letter of guaranty has a right to know whether it is accepted; and whether the person to whom it is addressed means to give credit on the footing of it or not."

As to notice of advances, the quotation from Brandt on Suretyship & Guaranty (Appellant's Brief, p. 21) is plain: "Where, however, the guaranty is a continuing one—the same reasons which require notice of the acceptance of the guaranty also requires notice of the advances made under it."

Prof. Brandt further summarizes the law that in the case of a continuing guaranty "within a reasonable time" after all the transactions are

closed, the guarantor must be notified of the amount due under the guaranty."

* * * * * * * * *

Respondent's remarks under Points 6, 7 and 8 require no further reply.

The judgment should be reversed.

Respectfully submitted,

JOSEPH J. CORN,
Attorney and Counsel of Appellant.

closed, the guarantor must be notified of the amount due under the guaranty."

* * * * * * * * *

Respondent's remarks under Points 6, 7 and 8 require no further reply.

The judgment should be reversed.

Respectfully submitted.

JOSEPH J. CORR,
Attorney and Counsel of Appellant.