

**Lawrence Vs. Mccalmont**

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**Court :** US Supreme Court

**Decided On :** 1844

**Appeal No. :** 43 U.S. 426

**Appellant :** Lawrence

**Respondent :** Mccalmont

**Judgement :**

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**Lawrence v. McCalmont**

**43 U.S. (2 How.) 426**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE SOUTHERN DISTRICT OF NEW YORK*

## **SYLLABUS**

The following guarantee, viz.:

"In consideration of Messrs. J. & A. Lawrence having a credit with your house, and in further consideration of \$1 paid me by yourselves, receipt of which I hereby acknowledge, I engage to you that they shall fulfill the engagements they have made and shall make with you for meeting and reimbursing the payments which you may assume under such credit at their request, together with your charges, and I guarantee you from all payments and damages by reason of their default."

"You are to consider this as a standing and continuing guarantee, without the necessity of your appraising me from time to time of your engagements and advances for their house, and in case of a change of partners in your firm or theirs, the guarantee is to apply and continue to transactions afterwards, between the firms as changed until notified by me to the contrary."

is a continuing guarantee, and includes not only transactions under a letter of credit existing at the date of the guarantee, but also transactions which arose under a second letter granted at the expiration of the first, although the second credit contained a proviso

"that the bills be drawn by or in favor

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of parties permanently resident in Europe, and if made from the continent, they be made at the customary date, say three months."

The principles laid down in the case of [Bell v. Bruen](#), 1 How. 169, [42 U. S. 186](#) , which should govern the construction of commercial guarantees, reviewed and confirmed.

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 others.

The consideration in this case was not past.

The question whether or not the guarantor had sufficient notice of the failure of the principals to pay the debt was a question of fact for the jury.

Where notes are deposited for collection by way of collateral security for an existing debt, the case does not fall within the strict rules of commercial law applicable to negotiable paper. It falls under the general law of agency, and the agents are only bound to use due diligence to collect the debts.

The facts were these:

Robert McCalmont and the other defendant in error, were co-partners in trade in London, trading under the name of McCalmont, Brothers & Company.

In the year 1838, J. & A. Lawrence were merchants who resided in Brooklyn, near New York, in the same house with their mother, Susan Lawrence the plaintiff in error. Their counting house was in the city. McCalmont, Brothers & Co. had agents, J. Gihon & Co., also residing in New York.

On 21 November, 1838, J. & A. Lawrence obtained from the agents at New York the following letter:

"New York, 21 Nov. 1838"

"Messrs. McCalmont Brothers & Co., London: "

"Gent.: We have granted to Messrs. J. & A. Lawrence of this city a credit with you of 10,000, say ten thousand pounds sterling, to be availed of within six months from this time, in such drafts as they may direct, at four months' date, against actual shipments of goods for their account, and coming to their address; said goods to be forwarded through you or your agents."

"The above credit if granted under their engagement to cover your acceptances before maturity, by direct remittances from this country of approved sixty day bills -- seconds of exchange to be handed to us for transmission to you. You are to charge one percent commission

on the amount accepted, and to keep the account at five percent interest per annum. We are, gents., your ob. st."

"JOHN GIHON & CO."

In the course of the trial, William Davidson being under examination, the plaintiff's counsel asked the witness whether the letter of credit of 21 November, 1838, was delivered on an agreement for the guarantee. To this evidence the defendant's counsel objected as irrelevant and inadmissible. The judge decided that it was admissible for the purpose of showing the nature and character of the plaintiff's claim on J. & A. Lawrence, but not to vary the construction of the guarantee, and admitted the evidence; to which the defendant's counsel excepted.

The witness then testified that the said letter of 21 November, 1838, was delivered on Mr. Lawrence's proposal of his mother's security for the credit, which will be presently mentioned.

On 22 November, 1838, this letter was transmitted to England with the following endorsement:

"New York, Nov. 22, 1838"

"Messrs. McCalmont, Bros. & Co."

"Gent.: You will please accept our, Mr. A. T. Lawrence's, dfts. for amount of within credit, in such amounts, and at such times, as he may draw."

"Your ob. st.,"

"J. & A. LAWRENCE"

On 10 December, 1838, Mr. A. T. Lawrence, being then in England, received the above letter, and forwarded it to London, accompanied by the following letter from himself:

"Nottingham, Dec'r, 10, 1838"

"Messrs. McCalmont, Bros. & Co., London: "

Gent.: I now hand you enclosed, Messrs. J. Gihon & Co.'s letter of credit on you in favor of my house, J. & A. Lawrence, endorsed over to me for 10,000 sterling, and will you please write me, giving authority to draw for the amount? I observe that one of the conditions of the credit is that goods to the amount of the same shall be shipped through your agents. Will you please inform me the names of the houses in Liverpool and London, though whom you would wish the shipments made? Please address me at this place.

"Respectfully, your obt. servt.,"

"A. T. LAWRENCE"

On 11 December, 1838, McCalmont, Brothers & Co., acknowledged the receipt of the above letter as follows:

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"London, 11 Dec. 1838"

"A. T. Lawrence, Esq., Nottingham: "

"Sir: We have to acknowledge receipt of yours of yesterday's date covering the letter of credit in your house's favor, opened by our mutual friends, Messrs. John Gihon & Co., say to the extent of ten thousand pounds sterling, to be availed of by drafts on us at four months against actual shipments of goods for their account, and going to their address, said goods, if shipped from Liverpool, to be forwarded through our agent there, Nathan Cains, Esq., India Buildings, or from hence through us, or such shipping agent as you may appoint; but in that case, a copy of the bill of lading to be lodged with us prior to presentation of your drafts, and such drafts to appear within thirty days from date of shipment. This credit to be availed of within six months from 21 ulto., and your house undertaking to comply with the

other stipulations stated in it by Messrs. J. Gihon & Co., viz., that they engage to cover our acceptances before maturity, by direct remittances from United States by approved bills of sixty days, the seconds to be forwarded to us through our agents, Messrs. John Gihon & Co., your house to pay us one percent Commission on the amount of our acceptances and disbursements, the account to be kept at five percent interest per annum, which credit we hereby confirm to you, trusting that in opening an account with your respectable firm it will lead to a mutually agreeable and profitable correspondence."

"We remain, sir., your most obedt. servt.,"

"Mc CALMONT, BROS. & R. CO."

"It is to be understood that the above credit is the only one you have in Europe."

"McC., BROS. & R. CO."

On 17 December, 1838, Susan Lawrence, the plaintiff in error, wrote the following letter:

"Messrs. McCalmont, Brothers & Co., London: "

"Gent.: In consideration of Messrs. J. & A. Lawrence having a credit with you house, and in further consideration of one dollar paid me by yourselves, receipt of which I hereby acknowledge, I engage to you that they shall fulfill the engagements they have made and shall make with you, for meeting and reimbursing the payments which you may assume under such credit at their request, together with your charges, and I guarantee you from all payments and damages by reason of their default. "

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"You are to consider this a standing and continuing guarantee without the necessity of your apprizing me, from time to time, of your engagements and advances for their house, and in case of a change of partners in your firm or theirs, the guarantee is to apply and continue to transactions afterwards between the

firms as changed until notified by me to the contrary."

Yours, respectfully,

"SUSAN LAWRENCE"

Under these documents, advances were made and settled, and for the transactions within the six months, from November 21, 1838, nothing was claimed.

At the expiration of the six months, the credit was renewed by the following letter:

"New York, June 12, 1839"

"Messrs. McCalmont, Brothers & Co., London: "

Gent.: With reference to our letter of 21 November last, opening a credit on your good selves, favor Messrs. J. & A. Lawrence for 10, 000, to be drawn within six months from that date, and which expired by limitation last month. We hereby renew the same for a like period from the date hereof, and under the same stipulations, with this proviso, that the bills be drawn by or in favor of parties permanently resident in Europe, and if made from the continent, they be made at the customary date, say three months.

"We remain &c.;,"

"JOHN GIHON & CO."

In the course of the trial, William Davidson, again called by the plaintiff's counsel, was asked whether at the time of the renewal of the credit in June, 1839, a conversation took place with Mr. Lawrence respecting the application of the guarantee to it, to which the defendant's counsel objected, but the judge admitted the same to show the nature and character of the plaintiff's claim on J. & A. Lawrence, but not to affect the construction of the guarantee, to which the defendant's counsel excepted. The witness then testified that Mr. Lawrence on that occasion called on him and asked if it was agreeable for witness' firm to continue the credit for 10,000. Witness replied that he had no objection to continue

it on the same terms as before, stating that it was to be on his mother's guarantee attached to the previous credit; he answered that he did not expect it on any other terms, or without the guarantee. Witness was in a hurry, and said that he should refer to it to find out whether the guarantee was for a particular credit or was a continuing guarantee.

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Witness afterwards referred to the letter of guarantee, and subsequently drew up the letter continuing the credit and delivered it to Mr. J. D. Lawrence, and exhibited to him his mother's letter; he read it.

The plaintiffs' counsel then offered to prove that both the house of J. Gihon & Co. and J. & A. Lawrence acted upon the guarantee as a continuing guarantee. To this the defendant's counsel objected, but the judge admitted the evidence for the purpose of showing that both acted upon it as a continuing guarantee, but not to vary the construction of the guarantee itself, to which the defendant's counsel excepted. The witness then testified that Mr. Lawrence and he both agreed that it was a continuing guarantee, and as such no new letter was needed.

Witness testified that their house received sundry bills receivable, understood and represented to be business paper, not at maturity when received, to be collected and realized, as far as they could do it, and the proceeds to be remitted to the plaintiffs for the credit. It was a distinct understanding between witness' firm and J. & A. Lawrence, that they received this paper subject to its encashment, on being paid at maturity. Witness has had a statement made of the proceeds of the paper thus deposited. Witness' firm had realized from it, and remitted 1,309 16 s . 6 d . The amount due on the plaintiffs' said account with J. & A. Lawrence, crediting those remittances, and charging interest to the third day of May, instant, is 9,712 11 s . 4 d . -- amounting in dollars, at \$4.85 to the pound sterling, to \$47,105.95.

On 28 June, 1839, this letter was received by Mr. A. T. Lawrence, being still in England, and forwarded with the following letter from himself:

"Nottingham, June 28, 1839"

"Messrs. McCalmont, Bors. & Co.: "

"Dear Sirs: By the steamer *Great Western* I have received a letter of credit for 10,000, granted to our house by your friends Messrs. J. Gihon & Co., on your house, which I now hand you enclosed. 5,000 of the same I wish you to hold subject to the drafts of Messrs. Jones, Gibson & Ord, of Manchester, drawn at such times and for such amounts as they may deem proper. The balance you will hold subject to my draft or the drafts of such parties as I may advise at the time of their drawing."

"I am, gent., your ob't serv't."

"A. T. LAWRENCE"

"It is understood, of course, in case of your confirming the above

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named credit, that the remittances to meet the drafts drawn against it shall be in such bills as are approved of by your friends in New York."

On 5 July, 1839, the receipt of the above was acknowledged by the following letter addressed to the house in New York:

"London, 5 July, 1839"

"Messrs. J. & A. Lawrence, New York: "

"Gent.: Your favors of 6 and 24 May, were duly received with their enclosed remittances, which you will find at your credit in the annexed statement of your account current to 30 ulto."

"This account we hope you will find correct, and the bills about coming due will, we doubt not, have your usual attention."

"The further credit for 10,000 on your account opened by Messrs. J. Gihon & Co., we have confirmed to your Mr. A. Lawrence, on the understanding that it is to be met by remittances from New York, satisfactory to J. Gihon & Co."

"We are, gent. your most ob't serv't,"

"Mc CALMONT, BROS. & CO"

Upon this credit, J. & A. Lawrence drew several drafts in the months of July and August, 1839.

On 31 October, 1839, J. & A. Lawrence addressed the following letter to the London bankers:

"New York, 31 Oct., 1839"

"Messrs. McCalmont, Bros. & Co., London: "

"Gent.: We were in hopes that we should have been enabled ere this to have made you a remittance to meet your acceptances for our account, due 13 and 19 Nov., but such is the state of our money market that it is almost impossible to get money at any rate. The best of our commercial paper is offered freely at three and four percent per month discount, and owing to the deranged state of our internal exchanges, it is impossible to collect amounts due us in other cities except at a ruinous rate. Exchange on Philadelphia, only 96 miles from this, is 15 percent discount today. Under all these circumstances, we have to beg a little indulgence on your part. We shall remit you the moment it is in our power. We have offered your friends, Messrs. John Gihon & Co., to place our business paper in their hands in settlement, but they have declined at present. Browns and other bankers are settling in this way."

"We are, gent'm, resp'y &c.;"

"J. & A. LAWRENCE"

On 24 January, 1840, McCalmont, Brothers & Co. transmitted their account current to the Messrs. Lawrence, the receipt of which was acknowledged in the following letter:

"New York, May 30, 1840"

"Messrs. McCalmont, Bros. & Co., London: "

"Gent.: Your favor of 24 January came duly to hand, enclosing your account current with us to 31 December last, showing balance due you on that day of 10,349 8 s . 5 d . -- say ten thousand three hundred and forty-nine pounds eight shillings five pence, which we find correct. On 18 March last, we made a payment on your account to Messrs. J. Gihon & Co., of \$11,822.26 -- say eleven thousand eight hundred and twenty-two 26/100 dollars -- for which we have their acknowledgment as your agents."

"Respectfully, your ob't serv't,"

"J. & A. LAWRENCE"

On 29 May, 1840, John Gihon & Co. addressed the following letter to Susan Lawrence:

"New York, May 29, 1840"

"Mrs. Susan Lawrence: "

"Madam: We enclose on behalf of Messrs. McCalmont, Bros. & Co., a copy of the account of Messrs. J. & A. Lawrence with them, showing a balance due of 10,349 8 s . 5 d . -- say ten thousand three hundred and forty-nine pounds eight shillings and five pence sterling, on first January last, with interest. These gentlemen not having fulfilled their engagements to reimburse this account, we claim payment of you under your guarantee to Messrs. McCalmont, Bros. and Company."

Respectfully, yours,

"J. GIHON & Co."

"Agents of McCalmont, Bros. & Co., of London"

In July, 1840, an action of trespass on the case was brought in the circuit court by McCalmont, Brothers & Co., against Susan Lawrence upon the guarantee, who pleaded the general issue.

Evidence was given by the plaintiff upon the trial to sustain the above facts. The defendant offered evidence that sundry notes were deposited in the hands of John Gihon & Co., by J. & A. Lawrence for collection, and that due notice of their not being paid was not given to them and to Susan Lawrence.

The counsel for the defendant then asked the court to charge the jury upon the points of law arising in the case, as follows, *viz.*,

"1st. That the said credit of 21 November, 1838, is a standing and continuing credit during the six months. "

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"2d. That defendant's guarantee of 17 December, 1838, is confined to the said credit, both as to time and amount."

"3d. That the acceptances and claims of the plaintiffs demanded in their declaration in this suit are not covered by the guarantee of the defendant aforesaid."

"4th. That the new credit aforesaid of 12 June, 1839, is not a continuance or repetition of the first credit, but a departure from it, and is not covered by or embraced in the defendants' said guarantee."

"5th. That the nominal consideration of one dollar and the past consideration stated in defendant's said guarantee are not, nor is either of them, sufficient to sustain the said guarantee."

"6th. That the evidence that the said J. & A. Lawrence agreed to give a guarantee at the time said credit of 21 November, 1838, was given is not sufficient in law to render valid the consideration expressed in defendant's said guarantee or to sustain the said guarantee."

"7th. The facts being ascertained, the question whether the notice given to the defendant by the plaintiffs of the failure of the said J. & A. Lawrence to remit to cover the plaintiffs' acceptance was reasonable is a question of law, and no notice sufficient in law was given of such failure to the defendant."

"8th. If the sufficiency of such notice be a question exclusively of fact, a reasonable and sufficient notice was not given to her of such failure of J. & A. Lawrence to remit as aforesaid."

"9th. The notes received by the plaintiffs, through their agents to collect, ought, when there was a failure of payment, to have been regularly protested and due notice thereof served on the defendant and J. & A. Lawrence, and on failure thereof, a credit should be allowed for the same."

The judge thereupon charged the jury that the plaintiffs were not precluded from recovering under the guarantee in evidence by reason of any supposed want of consideration therefor, and the same was not without sufficient consideration.

That the said guarantee of the 17th December, 1838, was not limited to the credit of November 21, 1838, but was a standing and continuing guarantee, and did apply to, and was sufficient to embrace, transactions arising after the said credit of November, 1838, was expired.

That the new credit of June 12, 1839, and the advances and

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transactions under it, were not in law without the scope of the guarantee of December 17, 1838, and that the plaintiffs were, under the evidence, entitled to recover for the same under the said guarantee.

That the defendant was entitled to a reasonable notice of the default of the principal debtors to enable her to take measures for her indemnity; that it was for the jury to consider whether, under all the circumstances in evidence, the defendant had not had such notice.

That as to the notes turned over by the principal debtors to J. Gihon & Co., as the same were merely lodged with the latter, on their engagement that the proceeds of them, when received, were to be passed to their credit, the want of protest of any such notes as were dishonored, or of notice thereof to the said J. & A. Lawrence would not entitle the defendant to charge the plaintiffs with the amount of such notes, or to claim a deduction for that amount.

And with that charge, left the said cause to the jury, unto which charge, and to the refusal of the judge to charge otherwise and as requested by defendant as aforesaid, the defendants counsel then and there excepted.

The jury found a verdict for the plaintiff for \$47,105.97.

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MR. JUSTICE STORY delivered the opinion of the Court.

On 21 November, 1838, J. & A. Lawrence obtained from the agents (Messrs. Gihon & Co) at New York, of McCalmont, Brothers & Co., of London, the following letter of credit:

"New York, 21 Nov., 1838"

"Messrs. McCalmont, Brothers & Co., London: "

"Gents: We have granted to Messrs. J. & A. Lawrence of this city a credit with you of 10,000, say ten thousand pounds sterling, to be availed of within six months from this time, in such drafts as they may direct, at four months' date, against actual shipments of goods for their account, and coming to their address, said goods to be forwarded through you or your agents."

"The above credit is granted under their engagement to cover your acceptances before maturity by direct remittances from this country of approved sixty day bills -- seconds of exchange to be handed to us for transmission to you. You are to charge one percent commission on the amount accepted, and to keep the account at five percent interest per annum. We are, gents, your ob. st.,"

"JOHN GIHON & CO."

The letter of credit was delivered on Mr. Lawrence's proposal of his mother's (the plaintiff in error's) security for the credit. On 17 December, 1838, Mrs. Lawrence gave the following guarantee:

"Messrs. McCalmont, Brothers & Co., London: "

"Gents: In consideration of Messrs. J. & A. Lawrence having a credit with your house, and in further consideration of one dollar

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paid me by yourselves, receipt of which I hereby acknowledge, I engage to you that they shall fulfill the engagements they have made and shall make with you for meeting and reimbursing the payments which you may assume under such credit at their request, together with your charges, and I guarantee you from all payments and damages by reason of their default."

"You are to consider this a standing and continuing guarantee without the necessity of your apprizing me from time to time of your engagements and advances for their house, and in case of a change of partners in your firm or theirs, the guarantee is to apply and continue to transactions afterwards between the firms as changed, until notified by me to the contrary."

"Yours, respectfully,"

"SUSAN LAWRENCE"

Under these documents, McCalmont, Brothers & Co. made the stipulated advances, which were repaid, and on the transactions included within the six months from 21 November, 1838, nothing has been claimed by the London house. About the expiration of the six months, Mr. Lawrence (one of the firm of J. & A. Lawrence) at New York, called on the agents of McCalmont, Brothers & Co., and asked if it was agreeable for the agents to continue the credit for 10,000. The reply of one of the agents was that there was no objection to continue it on the same terms as before, stating that it was to be on the mother's guarantee attached to the previous credit. Mr. Lawrence then answered that he did not expect it on any other terms or without the guarantee. The agent then wished time to examine whether the guarantee was for a particular credit, or was a continuing guarantee, and having referred to the letter of guarantee, they drew up and delivered to Mr. Lawrence a second letter of credit (Mr. Lawrence and the agents both agreeing that it was a continuing guarantee, and as such no new letter was needed from the mother). The second letter of credit, dated 12 June, 1839, was as follows:

"New York, June 12, 1839"

"Messrs. McCalmont, Brothers & Co., London: "

"Gent.: With reference to our letter of 21 November last, opening a credit on your good selves, favor Messrs. J. & A. Lawrence for 10,000, to be drawn within six months from that date, and which expired by limitation last month. We hereby renew the same for a like period from the date hereof, and under the same stipulations,

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with this proviso, that the bills be drawn by or in favor of parties permanently resident in Europe, and if made from the continent they be made at the customary date, say three months."

"We remain &c.;"

"JOHN GIHON & CO."

Under this second letter of credit, bills were drawn and paid by McCalmont, Brothers & Co. to an amount exceeding in the whole the 10,000 stipulated for. The bills being all drawn at four months. The firm of J. & A. Lawrence not having made any remittances to pay the new advances, and firm having failed, the agents of the London house, on 29 May, 1840, addressed the following letter to Mrs. Susan Lawrence, giving her notice of the nonpayment of the advances:

"New York, May 29, 1840"

"Mrs. Susan Lawrence: "

"Madam: We enclose on behalf of Messrs. McCalmont, Bros. & Co. a copy of the account of Messrs. J. & A. Lawrence with them, showing a balance due of 10,349 8 s . 5 d . -- say ten thousand three hundred and forty-nine pounds eight shillings and five pence sterling, on first January last, with interest. These gentlemen not having fulfilled their engagements to reimburse this account, we claim payment of you under your guarantee to Messrs. McCalmont, Bros. & Company."

"Respectfully, yours,"

"J. GIHON & CO."

"Agents of McCalmont, Bros. & Co., of London"

She declining to pay the deficit, the present action of assumpsit was brought against her to enforce the payment. At the trial upon the general issue, in addition to the facts already stated, it was in evidence that during the whole period of these transactions, Mrs. Lawrence resided at Brooklyn (New York), in the same house with her sons, J. & A. Lawrence. There was also evidence in the cause to show that McCalmont, Brothers & Co., had by their agents certain notes belonging to the firm of J. & A. Lawrence and endorsed by the firm for collection, and the proceeds when received were to be applied towards the liquidation of the debt due to the London house, subject to their encashment on being paid at maturity, under which the sum of 1,309, 16 s . 6 d . had been realized. The notes thus deposited for

collection, which were dishonored at maturity, were protested accordingly, and the original plaintiffs offered the protests and notices to J. & A. Lawrence of the dishonor in evidence, but the evidence as to some of the notices was

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not full. Much other evidence was given at the trial, which, however, it is not necessary to state.

The counsel for Mrs. Lawrence then asked the court to charge the jury as follows:

"1st. That the said credit of 21st November, 1838, is a standing and continuing credit during the six months."

"2d. That defendant's guarantee of 17 December, 1838, is confined to the said credit, both as to time and amount."

"3d. That the acceptances and claims of the plaintiffs demanded in their declaration in this suit, are not covered by the guarantee of the defendant aforesaid."

"4th. That the new credit aforesaid of 12 June, 1839, is not a continuance or repetition of the first credit, but a departure from it, and is not covered by or embraced in the defendant's said guarantee."

"5th. That the nominal consideration of one dollar and the past consideration stated in defendant's said guarantee are not, nor is either of them, sufficient to sustain the said guarantee."

"6th. That the evidence that the said J. & A. Lawrence agreed to give a guarantee at the time said credit of 21 November, 1838, was given is not sufficient in law to render valid the consideration expressed in defendant's said guarantee or to sustain the said guarantee."

"7th. The facts being ascertained, the question whether the notice given to the defendant by the plaintiffs of the failure of the said J. & A. Lawrence to remit to

cover the plaintiffs' acceptances was reasonable is a question of law, and no notice, sufficient in law, was given of such failure to the defendant."

"8th. If the sufficiency of such notice be a question exclusively of fact, a reasonable and sufficient notice was not given to her of such failure of J. & A. Lawrence to remit as aforesaid."

"9th. The notes received by the plaintiffs through their agents to collect ought, when there was a failure of payment, to have been regularly protested and due notice thereof served on the defendant and J. & A. Lawrence, and on failure thereof, a credit should be allowed for the same."

The judge thereupon charged the jury that the plaintiffs were not precluded from recovering under the guarantee in evidence by reason of any supposed want of consideration therefor, and the same was not without sufficient consideration.

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That the said guarantee of 17 December, 1838, was not limited to the credit of November 21, 1838, but was a standing and continuing guarantee, and did apply to, and was sufficient to embrace, transactions arising after the said credit of November, 1838, was expired.

That the new credit of June 12, 1839, and the advances and transactions under it, were not in law without the scope of the guarantee of December 17, 1838, and that the plaintiffs were, under the evidence, entitled to recover for the same under the said guarantee.

That the defendant was entitled to a reasonable notice of the default of the principal debtors, to enable her to take measures for her indemnity; that it was for the jury to consider whether under all the circumstances in evidence, the defendant had not had such notice.

That as to the notes turned over by the principal debtors to J. Gihon & Co., as the same were merely lodged with the latter, on their engagement that the proceeds of

them, when received, were to be passed to their credit, the want of protest of any such notes as were dishonored, or of notice thereof to the said J. & A. Lawrence would not entitle the defendants to charge the plaintiffs with the amount of such notes, or to claim a deduction for that amount.

And with that charge left the said cause to the jury, unto which charge, and to the refusal of the judge to charge otherwise and as requested by defendant as aforesaid, the defendant's counsel then and there excepted.

The jury found a verdict for the plaintiffs for \$47,105.97, upon which judgment was rendered for the plaintiffs, and upon that judgment and the exceptions taken at the trial the present writ of error has been brought.

Some remarks have been made on the argument here upon the point in what manner letters of guarantee are to be construed -- whether they are to receive a strict or a liberal interpretation. We have no difficulty whatsoever in saying that instruments of this sort ought to receive a liberal interpretation. By a liberal interpretation we do not mean that the words should be forced out of their natural meaning, but simply that the words should receive a fair and reasonable interpretation, so as to attain the objects for which the instrument is designed and the purposes to which it is applied. We should never forget that letters of guarantee are commercial instruments -- generally drawn up by merchants in brief language -- sometimes inartificial, and often loose in their structure and form, and to construe the words

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of such instruments with a nice and technical care would not only defeat the intentions of the parties, but render them too unsafe a basis to rely on for extensive credits, so often sought in the present active business of commerce throughout the world. The remarks made by this Court in the case of [Bell v. Bruen](#), 1 How. 169, [42 U. S. 186](#) , meet our entire approbation. The same doctrine was asserted in *Mason v. Pritchard*, 12 East 227, where a guarantee was given for any goods he hath or may supply W. P. with to the amount of 100,

and it was held by the court to be a continuing guarantee for goods supplied at any time to W. P. until the credit was recalled, although goods to more than 100 had been first supplied and paid for, and the court on that occasion distinctly stated that the words were to be taken as strongly against the guarantor as the sense of them would admit of. The same doctrine was fully recognized in *Haigh v. Brooks*, 10 Ad. & E. 309, and in *Mayer v. Isaac*, 6 Mees. & W. 605, and especially expounded in the opinion of Mr. Baron Alderson. It was the very ground, in connection with the accompanying circumstances, upon which this Court acted in [Lee v. Dick](#), 10 Pet. 482, and in [Mauran v. Bullus](#), 16 Pet. 528. Indeed, if the language used be ambiguous and admits of two fair interpretations, and the guarantee has advanced his money upon the faith of the interpretation most favorable to his rights, that interpretation will prevail in his favor, for it does not lie in the mouth of the guarantor to say that he may without peril scatter ambiguous words by which the other party is misled to his injury.

Passing from these general considerations, let us now address ourselves to the points made at the argument. The first point is that the second advance was made upon terms and under an agreement materially variant from that on which the guarantee was given, without any communication with the guarantor or her consent thereto. The variances insisted on are two -- first in requiring the bills to be drawn by or in favor of parties permanently resident in Europe, secondly that if the bills were drawn from the continent of Europe, they should be made at the customary date, say three months. We think that there is no variance whatsoever which is not fairly within the scope of the original guarantee and was so contemplated by J. & A. Lawrence, as well as by the agents of the London house. This is explicitly proved by the evidence, for upon the question's arising, both the Lawrences and the agents agreed that it was a continuing guarantee, and as such no new letter of guarantee was needed. It is

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true that Mrs. Lawrence was no party to this interpretation of the instrument, but then it is strong evidence to establish that it was neither a forced nor unnatural interpretation of the words, and the agents of the London house agreed to make

the second advance upon the faith of it.

Now looking to the very words of the guarantee, we see that it contemplated not a single advance and then it was to end, but a continuing guarantee, and the very words are found in it. It also contemplated not only agreements which had been already made between J. & A. Lawrence and the agents, but also future agreements. The guarantor says: "I engage that they shall fulfill the agreements they have made, and shall make with you for meeting and reimbursing the payments which you may assume." And again:

"You are to consider this a standing and continuing guarantee without the necessity of apprizing me from time to time of your engagements and advances for the house. . . . So that new engagements and new advances were contemplated to be made to which the guarantee should attach without notice thereof."

And this is not all, for the guarantee goes on to provide for its continuance in case of a change in the partners of either firm (a change which would ordinarily be fatal to a guarantee), and that the guarantee should apply to and continue upon transactions afterwards between the firms so changed until notified by her to the contrary. It seems plain from all this language that a series of new transactions, new agreements, and new engagements were within the contemplation of the parties, not advances for six months alone, but advances from time to time for an indefinite period, until notice to the contrary should be given by the guarantor. It is difficult to conceive of any language more definite and more full to express the real intention of the parties. The original advance was indeed agreed to be made in the manner stated in the first letter of credit, and if there be any variance between the terms of the first and the second letter of credit, that was left solely and exclusively for the immediate parties J. & A. Lawrence and the agents to adjust and consider. They might enter into any new engagements as to the mode of drawing the bill, and the time which they were to run at their pleasure, without breaking in upon the true intention of the guarantee. All the stipulations of the first letter of credit were retained in the second, and an additional provision made that if bills were drawn from the continent of Europe, they should be made at the customary date and by a

permanent resident. But this

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left J. & A. Lawrence at full liberty to draw direct on London at four months if they chose, and in point of fact no bills were ever drawn by them except direct on London, and not from the continent. The additional liberty given or condition imposed was not availed of, and if it had been, it would not have in any manner exonerated the guarantor from her responsibility. Without, therefore, looking to the question whether these variances might or might not have been material if new arrangements and engagements had not been within the scope of the guarantee, we are of opinion that the objection is, in the present case, not maintainable.

This view of the matter disposes also of the second, third, and fourth points made at the argument.

The fifth point is that there is no valid consideration to support the guarantee. This is pressed under two aspects; the first is that the consideration was past and not present, for the letter of credit had been already delivered to J. & A. Lawrence by the agents of the London house. The second is that the payment of the one dollar is merely nominal, and not sufficient to sustain the guarantee if it had been received, and it is urged that it was not received. As to this last point we feel no difficulty. 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. Troth*, 5 Bing. 577, where the guarantor gave a guarantee 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 guarantee good and the consideration sufficient. In *Brooks v. Haigh*, 10 Ad. & E.

309, 323, the court held that a surrender by the guarantee of a former guarantee, even if it was not of itself binding upon the guarantor, was a sufficient consideration to take the case out of the statute of frauds and to sustain a promise made on the footing thereof. But independently of all authority, we should arrive at the same conclusion. The receipt of the one dollar is acknowledged; no

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fraud is pretended or shown, and the consideration, if standing alone in a *bona fide* transaction, would sustain the present suit.

As to the other point, that the consideration was past, it admits of several answers, each of which is equally decisive. In the first place, although the Messrs. Lawrence had received the letter of credit before the guarantee was given, yet it was a part of the original agreement contemporaneous with the letter of credit that it should be given, and if the guarantee had not been given, the whole advance might have been recalled as a fraud upon the London house. In the next place, it does not appear that all the bills for the 10,000, under the first letter of credit, were drawn before the guarantee was actually given, and if they were not, certainly it would attach upon the bills drawn under the first credit after it was actually given. The contract was then a continuing contract on both, and partially performed only by one. In the next place, the guarantee itself uses language susceptible of being treated as a present continuing consideration *in fieri*. It is "in consideration of Messrs. J. & A. Lawrence having a credit with your house;" now, the word "having" imports a present or future advance just as much as a past. The word "having" is in the present tense, and if the parties then understood the letter of credit to be *in fieri* and to be absolute only upon a condition subsequent, *viz.*, the giving of the guarantee, the word is the most appropriate which could be used. The case of *Haigh v. Brooks*, 10 Ad. & E. 309, approaches very near to the present. There, the guarantee was "in consideration of being in advance to L. &c.;, I guarantee &c.;" The Court of King's Bench thought that the words "being in advance" did not necessarily import a past advance, but might be applied to a present or future advance.

But that which puts the whole matter in the clearest light and beyond the reach of legal controversy is that the advances now sued for were all made after the second letter of credit was given, and if the guarantee applied (as we hold it did) to those subsequent advances under the new engagements, then the consideration was complete as upon a present, and not as upon a past, consideration. In every view, therefore, in which we can contemplate the objection, it has no just foundation in law.

As to the sixth point on the question, whether due notice of the failure of Messrs. J. & A. Lawrence to repay the advances had been given, it was a mere question of fact for the consideration of the jury as to whether the guarantor had reasonable notice or not.

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They have found a verdict for the plaintiffs, and we are not at liberty to disturb it in a court of error.

As to the seventh point, the notes having been left for collection only with the agents of the London house, although endorsed by the Messrs. Lawrence, they do not fall within the strict rules of commercial law applicable to negotiable paper. Admitting for the sake of the argument that notice was not punctiliously given by the agents, still it resolves itself into a mere question of due diligence on the part of the agents to collect the notes, and falls under the general law of agency. No evidence was shown at the trial to establish any loss or damage on the part of Mrs. Lawrence for want of due protest and notice, (if they were not made), and in the absence of such proof we are not at liberty to presume that the agents did not do their duty.

The case of [Swift v. Tyson](#), 16 Pet. 1, is entirely distinguishable from the present in its leading circumstances. There, the question was not whether a person receiving a note as collateral security or for an antecedent debt was not bound to due diligence in its collection, otherwise he made it his own, which was not doubted, but whether, taking it as collateral security or in payment of an

antecedent debt, he was not to be treated as a *bona fide* holder for a valuable consideration, unaffected by any unknown equities between the original parties. This Court held that he was.

Upon the whole, we are all of opinion that there was no error in the rulings of the court, and the judgment is therefore

*Affirmed with costs.*

## **ORDER**

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of New York, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs and damages at the rate of six percent per annum.

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