This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of New Jersey, and was argued by counsel: On consideration whereof, it is considered, 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.

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*99] The Union Bank of Georgetown, Appellant, *v.* Anna Geary, Appellee.

Equity.—Responsive answer.—Consideration.—Authority of attorney.

It is a well-settled rule, that in a bill praying relief, when the facts charged in the bill as the ground for the decree, are clearly and positively denied by the answer, and proved only by a single witness, the court will not decree against the defendant; and it is equally well settled that when the witness on the part of the complainant is supported and corroborated by circumstances sufficient to outweigh the denial in the answer, the rule does not apply.

An injunction bill was filed, upon the oath of the complainant, against a corporation, and the answer was put in, under their common seal, unaccompanied by an oath. The weight of such answer is very much lessened, if not entirely destroyed, as it is not sworn to.

The court is inclined to adopt it, as a general rule, that an answer, not under oath, is to be considered merely as a denial of the allegation in the bill; analogous to the general issue at law, so as to put the complainant to the proof of such allegation.[1]

The attorney of the plaintiffs, in an action on a promissory note, agreed with the defendant whose intestate was indorser of the note, that if she would confess judgment, and not dispute, her liability upon the note, he, the attorney, would immediately proceed by execution to make the amount from the maker of the note, the principal debtor; who, he assured her, had sufficient property to satisfy the same; upon the faith of this promise, she did confess the judgment: *Held*, that this agreement fell within the scope of the general authority of the attorney, and was binding on the plaintiffs in the suit. The plaintiffs in the suit having failed to proceed by execution against the maker of the note, and having suffered him to remove, with his property, out of the reach of process of execution, the circuit court, on a bill filed, perpetually enjoined proceedings on the judgment confessed by the administratrix of the indorser, and the decree of the circuit court was, on appeal, affirmed by the supreme court.

The consideration alleged in the bill for the promise of the attorney, to proceed by execution against the maker of the note, and make the amount of the same, was the relinquishment of a defence which the defendant at the time considered legal and valid; by a subsequent judicial decision, it was determined, that the defence would not have been sustained. To permit this decision to have a retrospective effect, so as to annul a settlement or agreement made under a different state of things, would be sanctioning a most mischievous principle.

The general authority of an attorney does not cease with the entry of a judgment; he has, at least, a right to issue an execution; although he may not have the right to discharge such execution, without receiving satisfaction.

The suit does not terminate with the judgment; proceedings in the execution are proceedings in the suit.

Garey *v.* Union Bank, 3 Cr. C. C. 233, affirmed.

Appeal from the Circuit Court of the district of Columbia, for the county of Washington.

*100] *Anna Geary, as administratrix of her husband, Everard Geary, filed her bill in the circuit court, in which she set forth, that her intestate, some time before his death, became surety on a note which was discounted for the accommodation of J. Merrill, at the Union Bank of Georgetown, for a large sum of money, which was continued, from time

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[1] The answer of a corporation, under its corporate seal, is not evidence in its own favor, though responsive to the bill. Lovett *v.* Steam Saw-mill Association, 6 Paige 54. And see Patterson *v.* Gaines, 6 How. 588.

to time, by a renewal, in the usual way, for the accommodation of Merrill, until the death of her intestate. Subsequently to his death, suits were instituted in the circuit court, upon the note, against the maker and indorser; and she was called on by the counsel and attorney of the bank, and requested to confess a judgment on the note, and was, at the time, assured by the attorney, that if she did so, and did not dispute her liability upon the note, the bank would immediately proceed by execution to make the amount thereof from the principal debtor, Merrill; who, he assured her, had sufficient property in the county to satisfy the same; and he, advising her that she would be thus saved from liability for the debt, prevailed on her to make no defence against the suit at law, but voluntarily to confess a judgment thereon, for the amount of the debt, principal, interest and costs. The judgment was confessed for $4000 damages and costs, to be released on payment of $2000, with interest from 24th January 1815, until paid. Various payments, from May 30th, 1815, until August 6th, 1816, were made by Merrill, amounting to $753.39. The complainant charged, that at the time of confessing the judgment, a valid legal defence existed against the suit, which would have defeated the plaintiffs' right to recover on the indorsement; the plaintiffs not having made due and legal demand, and given due and legal notice, so as to bind the indorser; that the attorney of the bank well knew the same, and therefore, and to prevent complainant from contesting the suit, made the proposition before stated. The bill further charged, that when the judgments were obtained against Merrill and the complainant, on the note, Merrill resided in Georgetown, and had then and there sufficient property to satisfy and pay the judgments, and the *same might, then and for some time afterwards, have been recovered by process of execution, issued either against the body or the goods of Merrill. Complainant repeatedly and earnestly called upon the plaintiffs, and urged them to issue execution against Merrill, and recover their debt, according to the agreement and understanding upon which she had confessed judgment. The plaintiffs, however, continued to indulge Merrill, for a long space of time, and, notwithstanding all the remonstrances of the complainant, permitted him to leave the district, and take with him all his property beyond the process of the court; nor had they taken any effectual and proper means to recover the debt from said Merrill, as bound by their agreement to do. Merrill was now, as the complainant was informed and believed, in insolvent circumstances. And now, that by their misconduct and breach of faith, they had lost the means of recovering the judgment from Merrill, the plaintiffs, most unjustly and unreasonably, demanded payment of the same from the complainant, and threatened to proceed against her on said judgment, which she believed they meant to do. [*101

The answer of the defendants below, which was filed under their corporate seal, and was not sworn to, admitted, that Merrill did borrow the sum of $2200, upon his promissory note indorsed by Everard Geary, and averred, that the loan was made exclusively on the credit of the indorser; Geary having proposed himself as security of Merrill, whom he was anxious to assist and benefit by indorsing his note. The answer alleged, that the needy circumstances of Merrill were well known to the defendants and to the indorser; he never had sufficient property to pay his debts, and that

the indorser was known to be in good circumstances, and of ability and willingness to discharge his debts and responsibilities. During his lifetime, the indorser frequently promised to save and protect the bank from any loss on account of Merrill's inability to meet the note; and had he lived, he would punctually have complied with such promises. Upon the death of E. Geary, his administratrix, the complainant, refused to pay the note when it became due, and suffered the same to be protested; and it became necesssary for defendants to institute suits against the maker and indorser; *upon which suits judgments were obtained in December 1817. As to so much of the bill as charged any persuasion or agreement by the attorney of the bank, the defendants denied the same; and averred, that the judgment was not obtained voluntarily, the complainant having appeared to the suit, and contested the same in every stage, until the trial term; and when defendants were prepared with all necessary proof, and the case actually called for trial, the attorney of complainant, knowing that he had no good and valid defence, confessed the judgment. The defendants denied, that they ever authorized or directed their attorney to hold out any inducements to the complainant to confess the judgment, or to make any such persuasions and promises as were set forth in the bill; and they averred, that such persuasions and promises would have been wholly superfluous and unnecessary, as the complainant was legally and justly liable and bound to the defendants for the payment of the debt, and was then better acquainted with the situation of Merrill than the defendants or their attorney. They denied, that the complainant had any valid legal defence to the action; but averred, that payment of the note was legally demanded, and that due notice of non-payment was given. But whatever defence the complainant might have had, which was denied, the defendants insisted, that she had waived any such legal or technical defence, and omitted to protect herself thereby at law, and could not now avail herself of the same in equity. They denied, that when the judgment was obtained, or at any time afterwards, Merrill had sufficient property, unincumbered, whereon execution could have been levied and the money made; and they believed, that had they issued an execution against his body, it would have involved a useless increase of costs, as they believed, he would have taken the benefit of the insolvent law; they denied, that they have been remiss and inattentive in obtaining payment from Merrill; on the contrary, they averred, that by their active exertions, they did obtain payment from Merrill of $853, which otherwise never would have been paid. They denied ever having granted indulgences to Merrill, without the knowledge, consent and concurrence of the complainant; or that they *permitted him to leave the district and take his property with him, or refused to take proper and efficient measures to recover their judgment from him. The answer also stated, that whenever they called upon the complainant to pay the debt, they were ready and willing to make an assignment of the judgment against Merrill, and repeatedly offered to do so, before he left the district, which was refused.

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On the answer being filed, the circuit court, on motion, dissolved the injunction; and the complainant having filed a general replication, the testimony of various witnesses was taken; and upon a final hearing, the court

revived and perpetuated the injunction. From this decree, an appeal was entered.

The substance of the depositions was as follows: Daniel Renner, a director of the bank, said, that he was called on by Mrs. Geary, to get the Union Bank to have an execution issued against Merrill, before Merrill left the district; he made the application to the board. No answer was made, or, if any, to this effect: that they were not bound to press Merrill; that Mrs. Geary, if she pleased, could pay the judgment, and then adopt such course as she pleased. He was not certain, whether this suggestion came from the board, or from some of them, out of the bank. Mrs. Geary made frequent applications to him to get execution issued against Merrill, before he left town; and he several times spoke of it to the board.

G. Cloud stated, that all the knowledge he had of the judgment, was from the conversations between the cashier of the bank, Renner, Merrill and Wiley, the attorney of the bank, and Mrs. Geary. He well recollected the conversation between Mrs. Geary and Mr. Wiley, on the subject of her confessing judgment; and understood from the conversation of both of them, that if she would agree and confess judgment, she was to be cleared, and the money to be made out of Merrill's property, as he (Wiley) said, he had ascertained that Merrill had property sufficient to satisfy the debt, which was clear of incumbrances; and that it was expressly on these conditions that she confessed judgment. He heard Mrs. Geary tell Mr. Wiley, that he had promised, that if she would confess judgment, it would be better for her, as he would have the execution levied on Merrill's *property; and it would clear her from paying the debt, as Merrill had a sufficient property, clear of incumbrance; which he admitted he had told her, but that the fault was not in him, but in the directors of the bank. He did not think, that she was in danger of paying the debt; for he thought they would still get it out of Merrill. Merrill had considerable property in his possession, when he left the district; but the witness did not know his title to it. He heard Mr. Wiley say, he had ascertained, that it was clear of incumbrances; and that he had sufficient to satisfy the judgment. He heard Mrs. Geary tell Mr. Wiley, she never would have confessed judgment, if he had not told her that he would clear her, by instantly levying on Merrill's property; and that she verily believed, it was in his power to have the execution levied at his will—which he admitted. The reason assigned by Mr. Wiley was, that the directors of the bank would not suffer the execution to issue, as they knew their debt was safe, and did not wish to break up Merrill. The witness also stated, that he knew of frequent applications by Mrs. Geary to Wiley, to have execution issued, and went frequently himself on that business; but they would not suffer the execution to issue. One of the directors advised Mrs. Geary to pay off the judgment, and then the bank could not prevent her from having the execution issued; but she could not procure the money to do so. He had heard Mr. Renner say, that the directors did not use Mrs. Geary well, by withholding the execution, and suffering Merrill to leave the district; and that he had done what he could, to have the execution issued, but to no effect. [*104

E. Riggs, a director of the bank, stated, that he did not remember any agreement between the bank or its officers, and Mrs. Geary. He remembered a decision of the circuit court, exonerating indorsers upon a fourth day pro-

test. He remembered, that complainant, or some person for her, made application to the board, to call on Merrill for the debt, and press him for payment. The reply of the board (made by Dr. Magruder, as well as deponent recollected), was, that Merrill was not then able to pay, but was about to remove, where he probably would be more able to pay; but that complainant, if she chose, might pay the money, and have the judgment assigned to her; but the majority of the board did not feel *themselves called upon to distress Merrill, by complying with her request. Some of the board thought differently; and thought that if she could make anything out of Merrill's property, she should be allowed to do so. These were casual remarks, but no decision made. He thought the application was made by Mr. Renner, or by Mr. English, the cashier. He was always opposed to the loan to Merrill; but was always answered, that the indorser was sufficient.

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David English, the cashier, stated, that he never knew of the agreement, until the bill was filed, nor did he know, when the judgment was confessed, that the circuit court had delivered their opinion upon the insufficiency of a four days' protest. It was determined not to issue execution against Merrill, but upon what grounds, he did not recollect. It was said, the board were willing to assign the judgment. The note fell due, before the decision of the court relative to a four days' protest. The practice of protesting on the fourth day, was general with all the banks; and the indorser being a considerable dealer in the banks, was probably acquainted with it. The suit was in the hands of Mr. Wiley.

James A. Magruder deposed, that Mr. Wiley was the attorney or counsel for the Union Bank, at the time the judgment was confessed by the complainant. It was known to the bank, before the judgment was confessed, that many of their suits against indorsers, for trial at that term, were in jeopardy, in consequence of the late decision of the court, as to the insufficiency of the demand and notice on the fourth instead of the third day of grace. He understood from Wiley, that he was authorized and requested by the bank, or some of its officers, to adjust all such cases, and get judgments confessed by the parties, so as to avoid such defences being made by the indorsers. He was requested by said Wiley, to call on several of the indorsers, and among others, the complainant, with a view to make such adjustment; and did advise her to see Mr. Wiley, who was friendly to her, and would not advise her to do anything against her interest.

The case was argued by *Swann*, for the appellants; and by *Coxe* and *Jones*, for the appellee.

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Swann contended, that the complainant had not made out a case for the action of a court of chancery. The allegations of the bill were denied in the answer; and these allegations did not exhibit facts which entitled the complainant to relief, nor were they supported by the testimony of witnesses. The bank gave no authority to their attorney to accept a judgment on the terms stated; and the judgment was entered at the trial term, when the plaintiffs in the suit were prepared with witnesses to prove the liability of the administratrix in fact and at law; nor had the maker of the note property to pay the judgment. His inability to pay the note was known, when the loan was made; and it was made on the credit and suffi-

ciency of the indorser. The evidence by no means sustains the allegations of the bill. No two witnesses support the facts it asserts; and as the answer denies the bill, two witnesses are required to give the complainant a right to the injunction.

But if the attorney had made the promise which is averred by the complainant, such a promise would not bind the bank. As an attorney, he had no such right; and no evidence is given that the bank gave the authority. *Beecher's Case*, 8 Co. 116. If the bank had made a promise which, at the moment the judgment was entered, avoided it, such promise would be nugatory, as being without consideration. A judgment imports an absolute and unconditional obligation to pay; and the evidence of this obligation is of the highest character, that of a record; but in this case, it is to be invalidated by a parol agreement. A condition at war with a grant is void. So, a condition at war with a judgment of record, would be void.

The judgment was obtained in 1817; long before any decision relative to protests on the fourth day. The bill was filed in 1819, two years after the question was made. The complaint then was, that the judgment was not confessed on the ground that there was no defence; and the bill asks that the defence of want of legal notice may be allowed. But since that time, it has been decided by this court, that the notice was legal; and now, the complainant asks to be relieved from the debt altogether, by having the injunction perpetuated. Neither the law nor the evidence supports the claim.

**Coxe* and *Jones*, for the appellee, contended, that it was necessary to look at the time when the judgment was obtained. At that [*107 time, great doubts were entertained about the regularity of a four days' protest; and thus the arrangement made by the bank was one by which a benefit was supposed to be secured to the plaintiffs. The consideration for that judgment was the promise to proceed against Merrill, whose ability to pay the debt, was declared by the attorney of the bank to have been satisfactorily ascertained. Thus, it was not material, whether the question of the legality of the protest had been decided.

Two witnesses are not required to sustain the allegation of a bill, when one witness and circumstances confirm them. In this case, the statements of the bill are not denied on oath, the corporation having answered under its seal; and thus even the general rule cannot be applied to the case. 1 Cow. 110. Nor is the denial of the bank a denial of facts which they could have known. The bill charges the acts to have been done by the attorney. 1 Maryland 283; 9 Cranch 153.

The facts of the case present merits which fully entitle it to the relief of a court of equity. The agent of the bank agreed to take the judgment, on the condition that the debt should be collected from Merrill, who had property. It was positively stipulated, that execution should issue immediately against that property; and the question is presented, whether the attorney could make such an agreement? The bank acts only by its attorney. Wiley was the regular attorney of the bank, and is proved to have acted for them. The act done by him was within his powers in this relation to the bank. 3 Taunt. 486; 1 Esp. 178; Sayer 259; 1 Dall. 164; 1 Ld. Raym. 241; 13 Johns. 174; 17 Ibid. 324. But if there had been no ground of

defence to the suit, the case is not varied. There was a meritorious consideration for the agreement, and it was binding on the bank. 1 Ves. 408; 4 Ibid. 848; 2 Johns. Ch. 51, 60; 2 Vern. 423.

Thompson, Justice, delivered the opinion of the court.—The appellee, who was the complainant in the court below, and administratrix of her late husband, filed her bill in the circuit court for the district of Columbia,
*108] and for the *county of Washington, for the purpose of obtaining an injunction to restrain the Union Bank of Georgetown from all further proceedings on a judgment recovered against her as administratrix, upon a promissory note for $2200, bearing date the 21st of November 1814, which had been indorsed by her late husband, and discounted by the Union Bank, for the accommodation of Jeremiah Merrill, the maker. The judgment was entered in December 1817.

The bill states that suits were instituted in the circuit court upon the note, against the maker and indorser; and that the complainant was called upon by the attorney of the bank, and requested to confess a judgment on the note, and was, at the same time, assured by the attorney, if she did so, and did not dispute her liability upon the note, the bank would immediately proceed by execution, to make the amount thereof from Merrill, the principal debtor, who, he assured her, had sufficient property to satisfy the same; and advising her, that she would be thus saved from liability for the debt, prevailed on her to make no defence against the suit at law, but voluntarily to confess a judgment thereon.

The bill charges, that at the time of confessing the judgment, a valid legal defence existed against said suit, which would have defeated the plaintiffs' right to recover on the indorsement; the plaintiffs not having made due and legal demand, and given due and legal notice, so as to bind the indorser. That the attorney of the bank well knew the same, and to prevent the complainant from contesting the same, made the proposition above stated. The bill further charges, that when the judgments were obtained upon the note, Merrill resided in Georgetown, and had sufficient property to satisfy and pay the judgments; and that the same might then, and for some time afterwards, have been recovered by process of execution, issued either against the body or the goods of Merrill. And that the complainant repeatedly and earnestly called upon and urged the plaintiffs to issue execution against Merrill, according to the agreement and understanding upon which she had confessed judgment; but that the plaintiffs continued to indulge Merrill, and permitted him to leave the district, and take with him all his property, beyond the process of the court; nor have they taken
*109] any *effectual and proper means to recover the debt from Merrill, as bound by their agreement to do. The complainant further states, that she is informed and believes, that Merrill is in insolvent circumstances; and that now, the bank, having by their misconduct and breach of faith, lost the means of recovering the judgment from Merrill, unjustly and unreasonably demand payment of the complainant, and threaten to proceed against her on the judgment, which she believes they mean to do.

The defendants in the court below, in their answer, deny the agreement alleged to have been made by their attorney; and aver that the judgment was not confessed voluntarily, but contested in every stage, until the trial

term, and when the cause was actually called for trial, the complainant's attorney, knowing he had no good defence, confessed the judgment. They deny that they ever authorized or directed their attorney to hold out and inducement to complainant to confess the judgment, or to make any such persuasions and promises as are set forth in the bill; that they would have been wholly superfluous and unnecessary, as the complainant was legally and justly liable and bound for the payment of the note. They deny that the complainant had any valid legal defence to the action, but aver that payment of the note was legally demanded, and that due notice of non-payment was given. They deny that when the judgment was obtained, or at any time afterwards, Merrill had sufficient property unincumbered, whereon any execution could have been levied, and the money made. They deny that they have been remiss and inattentive in obtaining payment from Merrill.

These are the only parts of the bill and answer which it is deemed material to notice. Depositions having been taken, the cause was set down for a final hearing, upon the pleadings, exhibits and depositions, and the court decreed a perpetual injunction. From which decree, an appeal was taken to this court.

The first inquiry that seems naturally to arise in this case is, whether the agreement or contract set up in the bill, to have been made between Wiley, the attorney of the bank, and the complainant in the court below, has been established *by sufficient evidence, according to the rules and principles which prevail in courts of equity. It is denied by the answer, [*110 that such agreement was made. The agreement is certainly very fully proved by one witness. G. Cloud states in his deposition, that he well recollects the conversation between Mrs. Geary and Mr. Wiley, the attorney of the bank, on the subject of her confessing the judgment, and understood, from the conversation of both of them, that if she would agree and confess judgment, she was to be cleared, and the money to be made out of Merrill's property, as Wiley said, he had ascertained, that Merrill had property sufficient to satisfy the debt, that was clear of incumbrance; and that it was expressly on these conditions, that she confessed judgment. This witness, in his answer to another interrogatory, states that Mrs. Geary was to be cleared (as he expresses it), by instantly levying on Merrill's property. From which it is clearly to be inferred, that it was not intended, that she should be absolutely released from the judgment, but that her discharge would result from the satisfaction to be obtained from Merrill, of which, from the assurances of Wiley, little or no doubt could be entertained. Some criticisms have been made at the bar, upon the deposition of this witness. It has been supposed by the appellant's counsel, that he speaks only of one conversation; and that, after the judgment was entered. The inference that there was but one conversation is drawn from the printed statement of this deposition, where the witness is stated to have sworn that all the knowledge he had of the judgment was from a conversation between Mrs. Geary, Mr. Wiley and others. But in the deposition, as contained in the record, his knowledge is stated to have been derived from the conversation he heard between those persons. And he afterwards speaks of a multiplicity of conversations he heard on the subject, between the years 1815 and 1820, and evidently referring to periods both before and after the entry of the judgment. The agreement having been fully and satisfactorily established by this witness,

the question arises, whether there are any circumstances or other testimony disclosed in the case, to sustain the bill against the denial in the answer.

*111] It is certainly a well-settled rule, that on a bill praying *relief when the facts charged in the bill, as the grounds for obtaining the decree, are clearly and positively denied by the answer, and proved only by a single witness, the court will not decree against the defendant. And it is equally well settled, that where the witness on the part of the complainant is supported and corroborated by circumstances sufficient to outweigh the denial in the answer, the rule does not apply. 9 Cranch 160.

What are the circumstances in this case to meet and outweigh the denial in the answer? It is to be borne in mind, that the bill does not charge the agreement to have been made with the bank, but with their attorney. The denial by the bank is not, therefore, of any matter charged to have been within their own knowledge. They could, therefore, only speak of their belief, or from information received from their attorney, and not from their own knowledge of the transaction. The denial of their ever having authorized or directed their attorney to hold out any inducements to the complainant to confess judgment, or to make to her any such promise as is set forth in the bill, is not in answer to any allegation in the bill. The bank is not charged with having specially authorized or directed the agreement to be made. But it is charged as the act of their attorney; and whether this was within the scope of his authority, as attorney, in the suit, will be hereafter noticed.

There are other circumstances which go very far to take this case out of the application of the rule which requires corroborating evidence to support the testimony of a single witness, against the answer. This is an injunction bill, filed upon the oath of the complainant. An answer, in all cases, according to the course and practice of courts of chancery, must be sworn to; unless dispensed with by order of the court, under special circumstances. In the present case, the answer being by a corporation, it is put under their common seal, unaccompanied by an oath. And although the reason of the rule, which requires two witnesses, or circumstances to corroborate the testimony of one, to outweigh the answer, may be founded in a great measure upon the consideration that the complainant makes the answer evidence, by

*112] calling for it; *yet this is in reference to the ordinary practice of the court, requiring the answer to be on oath. But the weight of such answer is very much lessened, if not entirely destroyed as matter of evidence, when unaccompanied by an oath: and indeed, we are inclined to adopt it as a general rule, that an answer, not under oath, is to be considered merely as a denial of the allegations in the bill, analogous to the general issue at law, so as to put the complainant to the proof of such allegations. But it is not necessary, in the present case, to go thus far; for, independent of all these circumstances, the testimony of Cloud is strongly corroborated by that of Magruder. He swears, that Wiley was the attorney and counsel for the bank when the judgment was confessed. That he understood from him, that he was authorized and requested by the bank, or some of its officers, to adjust all such cases, and get judgments confessed by the parties; so as to avoid defences being made by the indorsers, with respect to the insufficiency of the demand and notice. And that Wiley requested him to call on the complainant, with a view to make such adjustment and

that he advised her to see Mr. Wiley, who was friendly to her, and would not advise her to do anything against her interest.

All these circumstances are abundantly sufficient to corroborate the testimony of Cloud, and outweigh the answer, even if it had been sworn to. The agreement, therefore, alleged in the bill to have been made by Wiley, the attorney of the bank, must be considered as fully established. And the next inquiry is, whether the attorney had authority to make such agreement, so as to bind the bank? It is necessary, here, that it should be understood with precision, what this agreement was. It seems to have been considered at the bar, by the appellants' counsel, as an agreement to release and discharge the complainant from all responsibility, if she would confess judgment upon the note. But such is not the agreement set up in the bill. It is, that if the complainant would confess judgment, and not dispute her liability upon the note, he (the attorney) would immediately proceed, by execution, to make the amount thereof from Merrill, the principal debtor, who, he assured the complainant, had sufficient property to satisfy the same; upon the faith of which promise she did confess the judgment. *It is [*113
not alleged nor pretended, that any special authority was given by the bank to their attorney, to make the agreement set up in the bill, and unless it fell within the scope of his general authority, as attorney in the suit, the bank cannot be held responsible. The general authority of the attorney does not cease with the entry of the judgment. He has, at least, a right to issue an execution, although he may not have the right to discharge such execution, without receiving satisfaction. 8 Johns. 366; 10 Ibid. 220. The suit does not terminate with the judgment. Proceedings on the execution are proceedings in the suit. It was, therefore, within the scope of the general authority of the attorney in the suits, to postpone the execution on the judgment against the indorser, and issue one on the judgment against the maker of the note; and this is the utmost extent of the alleged agreement. And indeed, it does not go thus far. The attorney only stipulated to issue an execution immediately, upon the judgment against Merrill. And if he had authority to issue an execution, of which there can be no doubt, he had authority to enter into an agreement that such execution should be issued, and thereby to bind the bank to the performance thereof. And that the bank has violated this agreement, by refusing to have an execution issued against Merrill, is abundantly proved. Repeated and urgent applications were made to them for that purpose, without effect; and the attorney, on application to him, admitted, that he had agreed to issue an execution immediatety after obtaining the judgment, and have it levied on Merrill s property; but said, the fault was not in him, but in the directors of the bank. No execution was issued, and Merrill was permitted to leave the district and remove his property beyond the jurisdiction of the court. And it may very fairly be concluded from the evidence, that had an execution been issued, the judgment might have been satisfied out of Merrill's property. It was proved by several witnesses, that he had considerable property in his possession, which he took with him, when he removed from Georgetown. That he was a housekeeper, had his house furnished, was the owner of hacks and horses, or had them in his possession. But, what is still more conclusive and satisfactory, is the declaration of Wiley, the attorney, who, for the purpose of in- [*114
ducing the complainant to confess the *judgment, assured her that

he had ascertained that Merrill's property was clear of incumbrance, and was sufficient to satisfy the judgment. This necessarily implied, that his knowledge was the result of particular inquiry on the subject.

But it is objected, that this contract was without any consideration to support it. The consideration alleged in the bill is relinquishing all defence in the action, and confessing a judgment; averring that the complainant had a valid legal defence, which would have defeated the right of the bank to recover on the indorsement, no due and legal demand having been made of the maker, and notice thereof given to the indorser. It is unnecessary to examine, whether this defence would have been available or not. The validity of the contract did not depend upon that question. It is enough, that the bank considered it a doubtful question; and that they supposed they were gaining some benefit by foreclosing all inquiry on the subject; and the complainant, by precluding herself from setting up the defence, waived what she supposed might have been of material benefit to her. That the bank considered it of some importance to shut out this defence, is fully shown by the testimony of Magruder. He says, it was known to the bank, before the judgment was confessed, that many of their suits against indorsers, for trial at that term, were in jeopardy, in consequence of a late decision of the court as to the insufficiency of the demand on the fourth, instead of the third day of grace. So that this question, at the time the contract was entered into, was considered by the bank, at least, doubtful. And to permit a subsequent judicial decision on this point, in their favor, as having a retrospective effect, so as to annul a settlement or agreement made by them, under a different state of things, would be sanctioning a most mischievous principle. In addition to this, there was a moral obligation resting upon the bank to do the very thing their attorney stipulated to do. Every consideration of justice and equity, in a moral, though not in a legal, point of view, called upon them to use due diligence to obtain satisfaction of the debt from the principal, before recourse was had to the surety. The decree of the circuit court granting a perpetual injunction is accordingly affirmed.

Decree affirmed.

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*115] *United States, Plaintiffs in error, *v.* Thomas Tingey, Defendant in error.

Pursers' bonds.

There is no statute of the United States expressly defining the duties of pursers in the navy; what those duties are, except so far as they are incidentally disclosed in public laws, cannot be judicially known to this court; if they are regulated by the usage and customs of the navy, or by the official orders of the navy department, they properly constitute matters of averment, and should be spread upon the pleadings.

A bond, voluntarily given to the United States, and not prescribed by law, is a valid instrument upon the parties to it, in point of law; the United States have, in their political capacity, a right to enter into a contract, or to take a bond in cases not previously provided by law; it is an incident to the general right of sovereignty; and the United States being a body politic may, within the sphere of the constitutional powers confided to it, and through the instrumentality of the proper department to which those powers are confided, enter into contracts not prohibited by law, and appropriate to the just exercise of those powers. To adopt a different principle would be to deny the ordinary rights of sovereignty, not merely to the general government, but even to the state governments, within the proper sphere of their own