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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Max Silberman, of the City of Atlantic City, County of Atlantic and State of New Jersey, respectfully shows that: 10

1. On December 27, 1926, Isaac Cades, Inc., being indebted to Herman J. Finn, of the City of Atlantic City, County of Atlantic and State of New Jersey, in the sum of ten thousand (\$10,000) dollars, executed a bond of that date to secure that sum, payable at the expiration of two years from the date thereof, with interest at the rate of six per centum per annum, payable semi-annually from the date of the bond. 20

2. To secure the payment of the bond, said Isaac Cades, Inc., executed to said Herman J. Finn, a mortgage of even date with the bond, and thereby conveyed to him, in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond, which mortgage having been first duly recorded in the clerk's office of Atlantic County, in Book #440 of Mortgages, on pages 460, &c. 30

3. The mortgaged premises are described as follows:

ALL that certain tract or parcel of land and

premises hereinafter particularly described, situate in the City of Atlantic City, County of Atlantic and State of New Jersey.

10 BEGINNING in the Westerly line of Connecticut Avenue, one hundred and fifty feet Southwardly of the Southerly line of Atlantic Avenue, and extending thence (1) Westwardly, parallel with Atlantic Avenue one hundred and seventy-five feet; thence (2) Southwardly, parallel with Connecticut Avenue, fifty feet; thence (3) Eastwardly, parallel with Atlantic Avenue, one hundred and seventy-five feet to the Westerly line of Connecticut Avenue; thence (4) Northwardly in and along same fifty feet to the place of beginning.

20 4. Both bond and mortgage contained an agreement that if any installment of interest should remain unpaid for thirty days and if the mortgagors should allow any municipal taxes or liens to become delinquent for sixty days after the same shall fall due, in that event, the whole principal sum with all unpaid interest should, at the option of the mortgagee, his representatives or assigns, become immediately due.

30 5. By written assignment dated December 27, 1926, said Herman J. Finn, assigned said bond and mortgage to the complainant, Max Silberman, which assignment was recorded in the Clerk's office of Atlantic County in Book 87, page 92.

6. On December 27, 1928, according to the terms thereof, said bond and mortgage became due and payable, but by verbal agreement on December 17, 1928, and subsequently confirmed by letter, the said

bond and mortgage were extended for a period of five months, becoming due and payable May 26, 1929.

7. On May 26, 1929, said bond and mortgage, according to the terms thereof became due, and complainant has elected that the whole principal and interest thereon to date shall now be payable.

8. On May 26, 1929, five months' interest on said 10
bond and mortgage became due and payable, according to the terms thereof and the terms of the extension of said mortgage, but defendant, Isaac Cades, Inc., made default in payment of said interest and the same has remained unpaid and in arrears for more than thirty days thereafter, and no part thereof has yet been paid. Complainant has elected that the whole principal sum of his mortgage, with all unpaid interest shall now be due.

9. On June 1, 1929, municipal taxes on the prop- 20
erty covered by complainant's mortgage became due and payable for the first half of the year 1929, and the defendant, Isaac Cades, Inc., failed to make the said payment of taxes and the same have remained unpaid and in arrears for more than thirty days thereafter, and no part thereof has yet been paid. Complainant has elected that the whole principal sum of his mortgage with all unpaid interest shall now be due.

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10. Said Isaac Cades, Inc., has always been in possession of the mortgaged premises.

11. The whole amount of principal with interest thereon from December 27, 1928, is due upon complainant's bond and mortgage.

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

1. That Isaac Cades, Inc., which is the defendant to this suit, may answer this bill of complaint, and each statement therein made.

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

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

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

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

CHARLES M. DUELL,
Solicitor for Complainant.

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ANSWER AND COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

Between 10
MAX SILBERMAN,
Complainant,
and
ISAAC CADES, INC.,
Defendant.)
On Bill to Foreclose.
Answer and Counter-
claim.

Defendant, a corporation of New Jersey, says 20
that:

1. The statements contained in paragraph 1, as
alleged, are denied. The execution of the bond set
forth in said paragraph and the terms thereof are
admitted as alleged, but defendant denies that it, as
a corporation, was ever indebted to complainant in
the sum of \$10,000, or any other sum. Defendant
averts that the debt referred to in said paragraph 1
of the bill of complaint was a debt of \$8,500 and was 30
the debt of Isaac Cades, individually, and not the
debt of defendant corporation, and was due to the
complainant and not to Herman J. Finn, as alleged,
and that the real parties to the transaction, and the
persons solely interested therein, were and are the
complainant and the said Isaac Cades, and that the
purpose and character of the transaction were as

hereinafter alleged and set forth by way of counter-claim in this answer.

2. Defendant admits the execution and registry of the mortgage as alleged in paragraph 2, and avers that it was part of the transaction referred to in paragraph 1 of this answer hereinafter to be disclosed, for the same purpose and of the same character.

3. The correctness of the description of lands in paragraph 3 is admitted.

4. Defendant admits the truth of the facts alleged in paragraph 4.

5. Defendant admits paragraph 5.

20 6. Paragraph 6 is admitted.

7. Defendant admits that according to the terms of the bond and mortgage as modified and extended, the same became due on the date alleged in paragraph 7, but denies that the whole principal sum mentioned became due on that date or thereafter, and avers that the whole amount of principal secured by said bond and mortgage and which then became due was \$8,500 and no more, upon which the mortgagor was and still is entitled to credit by way of reduction of said amount due the sum of \$180, being the amount received by complainant as interest at the rate of 6% per annum for two years, to wit, from December 27, 1926, to December 27, 1928, on the sum of \$1,500 agreed to be advanced by complainant and included in the \$10,000 secured by said mortgage but not in fact advanced.

8-10. Paragraphs 8, 9 and 10 are respectively denied.

11. Paragraph 11 as alleged is denied. Defendant admits to be now due on said mortgage the sum of \$8,500 of principal, less said sum of \$180, leaving a balance of \$8,320 still due complainant, secured by said mortgage.

10

By way of counter-claim against the complainant and also against Herman J. Finn and Isaac Cades, third parties, defendant says that:

1. Defendant, Isaac Cades, Inc., is a corporation existing under the laws of the State of New Jersey, under the provisions of an Act of the Legislature entitled, "An Act Concerning Corporations (Revision of 1896)" and its supplemental and amendatory Acts. On or about April 9, 1926, Isaac Cades, Elliot Cades and Julius Cades signed and acknowledged a certificate setting forth and certifying that they proposed to form a corporation under the provisions of said Act with the object of dealing generally in land and real estate, and buying, selling, improving, mortgaging and conveying the same and estates and interests therein, with a total authorized capital stock of 100 shares all of which should be issued without nominal or par value. The number of shares subscribed for by the incorporators was 60 shares as follows: Isaac Cades 55 shares, Elliot Cades 3 shares and Julius Cades 2 shares. Said certificate was recorded in the clerk's office of Atlantic County, and thereafter, on April 23, 1926, was filed in the office of the Secretary of State at Trenton, as appears by certificates and the records of cor-

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30

porations, pursuant to the statute relating to corporations organized under said Act.

2. Said Elliot Cades and Julius Cades, who signed the certificate as incorporators, are sons of Isaac Cades, the other incorporator. The corporation was formed for the express and sole purpose of taking title to the land and premises described in the bill
10 of complaint by conveyance from Isaac Cades, who was the owner thereof and held title of record thereto, and afterwards executing a bond and mortgage securing thereon a loan of money which said Isaac Cades desired and intended to borrow giving said premises as security. None of the capital stock sub-
scribed for by the incorporators was issued for money, or paid for in money or property, or intended to be, and it was not intended that the corporation should purchase or hold any property other
20 than the property aforesaid, or engage in any business or exercise any corporate function whatever excepting with relation to said property, but was created and organized for the sole and exclusive benefit of said Isaac Cades.

3. After the incorporation of defendant, said Isaac Cades conveyed and caused title of record to said premises to be vested in it. No consideration was paid, or intended to be paid, for said conveyance and title. Said property was conveyed to, and
30 is now held by defendant in its name without any beneficial interest therein, but only for the benefit of and in trust for said Isaac Cades, who is the real beneficial owner thereof.

4. After said conveyance, said Isaac Cades desired to borrow from complainant a sum of money

to be secured upon said land, and complainant was willing to make a loan so secured, but only upon condition of receiving a premium or bonus for such loan equal to 15% of the amount thereof to be secured by mortgage and included in the amount of such mortgage, and thereupon, in order to avoid the operation of the statute of this State against usury and evade the effect of provisions thereof the complainant and said Cades agreed that complainant should lend to said Cades the sum of \$8,500, and that said Cades should pay to complainant for said loan of \$8,500 the sum of \$1,500 by way of premium or bonus for said loan, and should also pay interest on the sum of \$10,000 at the rate of 6% per annum, said loan, bonus and interest to be secured by bond and mortgage in the sum of \$10,000 on said land and premises, and in order to avoid and preclude the defense of usury in any proceeding that thereafter might be instituted to foreclose the mortgage so to be given, it was agreed between said parties to adopt, and they did adopt, the following plan or device, viz: to cause defendant corporation to execute to, or in the name of, one Herman J. Finn, a bond conditioned for the payment of the sum of \$10,000 at the expiration of two years from the date thereof, with interest at the rate of 6% per annum, and procure the said bond and mortgage to be assigned by said Finn to the complainant, who should then pay to said Isaac Cades the sum of \$8,500, the amount of the agreed loan, on the delivery to him of the bond, mortgage and assignment stipulated for. In pursuance of said plan or device, the bond, mortgage and assignment were executed, but no money was paid by Herman J. Finn to defendant upon or at any time after the execution of said bond and mortgage, and no delivery thereof was made to

him, nor did he receive any money from the complainant upon, or at any time after executing said assignment of the bond and mortgage. Said bond, mortgage and assignment were respectively delivered to said Isaac Cades, who in turn delivered the same to the complainant, or to his agent, on or about January 26th, 1927, who at the same time received from the complainant, in person or by or through
10 his agent, South Jersey Title and Finance Company, the amount of said loan, to wit, \$8,500.

5. This defendant has no beneficial estate or interest whatsoever in said premises and disclaims any interest in this suit. The said transaction was in effect and in fact directly between complainant and said Isaac Cades, who as the equitable and beneficial owner of the mortgaged premises is a proper and necessary party to this suit.

20

This defendant, therefore, prays:

1. That the said complainant, Max Silberman, and the said Isaac Cades and Herman J. Finn, third parties, may answer this counter-claim without oath and each statement herein made.

2. That the said Isaac Cades may be decreed to be the equitable owner of the mortgaged premises,
30 and this defendant to have no beneficial estate or interest therein. And to that end let the said Isaac Cades and Herman J. Finn be made parties defendant to the suit.

JOHN C. REED,
*Solicitor of Defendant,
Isaac Cades, Inc.*

5. Every statement and allegation set forth and contained in paragraph 5 thereof is admitted.

By way of counter-claim exhibited against the complainant this defendant says that:

1. Before the making of the writings mentioned in paragraphs 1 and 2 of the complainant's bill of complaint, to wit, on December 27, 1926, at Atlantic City, in the County of Atlantic and State of New Jersey, it was corruptly and against the form of the statute in that case made and provided, agreed by and between the said complainant and this defendant that the complainant should lend and advance to this defendant the sum of \$10,000 lawful money of the United States of America, and that the said complainant should forbear and give day of payment thereof to this defendant until the expiration of the full period of two years from and after the said 27th day of December, 1926, aforesaid, to wit, on December 27, 1928, then next ensuing, and that this defendant, for the loan of the said sum of \$10,000, and for giving day of payment thereof as aforesaid, should give and pay unto the said complainant on the said December 27, 1928, then next ensuing, more than lawful interest at and above the rate of six per cent per annum on the said sum of \$10,000, that is to say, the sum of \$1,500 of like lawful money, making together with the sum of \$8,500 to be lent and advanced by said complainant to this defendant, as aforesaid, the sum of \$10,000, as is set forth in the condition of bond and mortgage referred to in paragraphs 1 and 2 of said bill of complaint, and also that this defendant should pay to the said complainant interest on said sum of \$10,000 from

the 27th day of December, 1926, until the time of payment of the said sum of \$10,000 in said bond and mortgage mentioned, and that for securing payment of said sum of \$10,000, with interest for the same as aforesaid, to the complainant, and also for avoiding the penalty imposed by an Act of the Legislature of the State of New Jersey entitled "An Act against Usury," and evading the provisions of said Act, and especially Section 2 thereof, it was, as part 10
of the same transaction and at the time and place aforesaid, further corruptly agreed, that this defendant should cause and procure to be made and sealed by a certain corporation incorporated and organized under the laws of the State of New Jersey by the corporate name and title of Isaac Cades, Inc., as the act and deed of said corporation, and to and in the name of one, Herman J. Finn, and should deliver to said complainant certain writings obligatory, thereby binding itself said corporation in the penal 20
sum of \$20,000, conditioned for the payment by said corporation of said sum of \$10,000 to said Herman J. Finn, on the 27th day of December, 1928, then next ensuing, with interest upon said sum of \$10,000 in the meantime as aforesaid at the rate of six per centum per annum, to be paid to and until the said 27th day of December, 1928, then the next ensuing as aforesaid, and to cause the said writings obligatory to be assigned by said Herman J. Finn, under 30
his hand and seal, to and in the name of said complainant, and should deliver said deed of assignment to the said complainant, to wit, at Atlantic City, Atlantic County, New Jersey, aforesaid.

And this defendant avers and in fact further says that in pursuance of the said corrupt and unlawful agreement, so made as aforesaid, the said complainant afterwards, to wit, on or about January 26, 1927,

to wit, at Atlantic City aforesaid, in the county and State aforesaid, lent and advanced to this defendant the sum of \$8,500, and that for the securing of the payment thereof together with the sum of \$1,500 bonus so to be paid and given to the said complainant, as aforesaid, for the purpose aforesaid, on the 27th day of December, 1928, aforesaid, then next ensuing, with interest in the meantime as aforesaid, to be paid, as well for the said sum of \$8,500 so lent and advanced, as for the said sum of \$1,500 so to be given and paid to the said complainant as aforesaid, for the purpose aforesaid, making together the sum of \$10,000 as aforesaid, this defendant in further pursuance of said unlawful agreement, then and there, to wit, on the 27th day of December, 1926, aforesaid, at Atlantic City aforesaid, in the county and State aforesaid, caused to be made and sealed by the said Isaac Cades, Inc., the corporation aforesaid, as its act and deed, to and in the name of said Herman J. Finn aforesaid, and delivered to said complainant and also counsel to be assigned by said Herman J. Finn under his hand and seal, to and in the name of said complainant, the said bond and mortgage in the sum of \$10,000 mentioned in the bill of complaint, and this defendant delivered said bond and mortgage and deed of assignment to said complainant, and the said complainant then and there received the said writings with the said condition thereunder written of and from this defendant in pursuance of said corrupt and unlawful agreement for the purpose aforesaid.

And this defendant avers that the said \$1,500 was as aforesaid agreed to be given and paid to the said complainant for the purpose aforesaid, and the interest on the said sum of \$10,000 so reserved and made payable by the condition of said writings as

aforesaid, exceeds the rate of six dollars for the forbearing and giving day of payment of \$100.00 for one year, contrary to the form of the statute in such case made and provided, by means whereof and by force of the said statute the said complainant cannot recover from this defendant, or upon said writings obligatory, more than \$8,500 without interest or costs.

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2. The whole amount of money lent and advanced by the complainant and received by the defendant and secured by said mortgage was the sum of \$8,500 and no more, since which this defendant has paid to complainant as interest on said mortgage debt the sum of \$1,200, being interest on the sum of \$10,000 for two years at the rate of six per cent per annum, of which \$1,200 the sum of \$180.00 was in said bond and mortgage and paid unlawfully under the agreement aforesaid upon the sum of \$1,500 not actually advanced but included in said bond and mortgage by way of bonus for said loan. This defendant is entitled to have the said sum of \$180.00 deducted from the sum of \$8,500 actually lent leaving a balance of \$8,320.00 due complainant on his said mortgage for principal and secured thereby, which amount of principal this defendant is ready and willing to pay, and hereby offers to pay, together with such just charges by way of interest or otherwise as he may be liable to pay when the same shall be ascertained.

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30

3. Neither the defendant, Isaac Cades, Inc., nor the defendant, Herman J. Finn, has or ever had any beneficial estate, title or interest in the said mortgaged premises, or in the said mortgage or the pro-

ceeds thereof, such beneficial interest at all times belonged and still belongs to the defendant who is solely interested therein.

This defendant therefore prays:

1. That the complainant and the defendant, Isaac Cades, Inc., may answer this counter-claim and each
10 statement therein contained, but without oath, which is hereby expressly waived.

2. That the said bond and mortgage and the transactions hereinabove set forth be decreed to be usurious.

3. That an account be taken of the aforesaid transactions between the complainant and this defendant in which this defendant shall receive as
20 credits upon said debt such sums as he shall be declared entitled to and the just balance due complainant upon his bond and mortgage be ascertained and determined.

4. That defendant have such further or equitable relief as may be just and appropriate.

U. G. STYRON,
*Solicitor of Defendant,
Isaac Cades.*

REPLICATION.

75-140.

IN CHANCERY OF NEW JERSEY

Between MAX SILBERMAN, <i>Complainant,</i> and ISAAC CADES, INC., <i>Defendant.</i>	}	On Bill, &c. Replication.	10
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Complainant joins issue on the answer of the defendant, and in reply to the counter-claim says:

1. Defendant is a corporation existing under the laws of the State of New Jersey. Complainant is without knowledge as to the other averments in paragraph 1 sufficient to form a belief. 20

2. Elliot Cades and Julius Cades are sons of Isaac Cades. As to the other averments in paragraph 2 complainant has not any knowledge or information thereof sufficient to form a belief.

3. As to the statements in the 3rd paragraph, complainant has not any knowledge or information thereof sufficient to form a belief. 30

4. Paragraph 4 is denied.

5. Paragraph 5 is denied.

CHARLES M. DUELL,
Solicitor for Complainant.

C. L. COLE,
Counsel.

(Bond received in evidence and marked Exhibit C1.)

(Mortgage offered, received in evidence and marked Exhibit C2.)

(Assignment of mortgage offered, received in evidence and marked Exhibit C3.)

(Declaration of no offset offered, received in evidence and marked Exhibit C4.) 10

MAX SILBERMAN, SWORN.

Direct examination.

By Mr. Cole:

20

Q. Has there anything been paid you on account of the principal of that mortgage?

A. No, sir.

Q. Up until what time has interest been paid to you?

A. Up to the twenty-seventh of 1928, December 27, 1928.

Q. None since then?

A. No, sir.

30

Cross-examination.

By Mr. Reed:

Q. Do you know Herman J. Finn?

A. Finn? If this man is Finn, if this man, I

might, in the rear there. I don't know Herman J. Finn.

Q. You don't know his name?

A. I don't remember him. He was in the apartment, was in the real estate business, they came to me and sold me the mortgage.

Q. Did they—is this the man here that made the arrangement with you about this mortgage?

A. Him and another man.

10

Mr. Cole: I object. I don't think this is cross-examination, looks to me like an effort to—

The Court: I think it is anticipating the defense. Sustain the objection.

Q. Have you the check that you deposited at the title company for this mortgage?

20 A. Yes, sir.

Mr. Cole: Object to that as not cross examination.

The Court: Sustain the objection.

Q. How much money did you deposit with the title company for this mortgage?

Mr. Cole: Objected to for the same reason.

30

The Court: Sustain the objection.

Q. You received interest on ten thousand dollars up to when?

A. 1928, December, up to December 27, 1928.

Q. I show you a check and ask you whether you

collected the money on account of this interest on this mortgage on that check?

A. Yes.

(Check marked D1 for identification.)

A. I did say to December 27th on that mortgage, all of it up to that time, 1928.

COMPLAINANT RESTS.

10

DEFENDANT'S TESTIMONY.

JOHN B. COOK, sworn.

Direct examination.

By Mr. Reed:

20

Q. What is your business, Mr. Cook?

A. Settlement clerk South Jersey Title and Finance Company.

Q. Have you with you the records of the South Jersey Title and Finance Company?

A. Yes, sir.

Q. In relation to this loan?

A. Yes, sir.

Q. Does that show how much money was deposited for the payment to Isaac Cades in this matter?

30

A. Yes, sir.

Mr. Cole: This is objected to as being irrelevant and immaterial; a corporation mortgage on its face, properly executed and authenticated, declaration of

no offset in the same situation, assignment of the mortgage to us, and I anticipate the effort here will be to support what is the opening and I submit it is incompetent and irrelevant and immaterial.

The Court: I will permit it.

Q. How much was deposited?

A. \$8500.

10 Q. Do your records show who deposited that money?

A. It was a check of Max Silberman. Just who the check was made to I cannot at this time tell.

Q. Did Herman J. Finn deposit any money in payment of this mortgage loan with you?

A. No check of Herman Finn's was received by the company unless this \$8500 check was made payable to him and endorsed by him to the company.

20 (No cross-examination.)

HERMAN J. FINN, SWORN.

Direct examination.

By Mr. Reed:

30 Q. Do you know Mr. Max Silberman?

A. I do, yes.

Q. Do you know Isaac Cades?

A. I do, yes.

Q. Did you ever have any business in negotiating a loan for Mr. Cades from Mr. Silberman?

A. I did, yes.

Q. What was the agreement that you and Mr. Silberman made with Mr. Cades as to this loan?

A. Why I told Mr. Silberman that Mr. Cades had a ten thousand dollar mortgage, that he was willing to sell at a discount and that he wanted, I had negotiations as to amount of the discount and finally Mr. Silberman agreed to take it at a discount of fifteen per cent and I took that up with Mr. Cades and he was satisfied and we made arrangements, guaranteed to sell the ten thousand dollar mortgage for eighty-five hundred dollars. 10

Q. This mortgage happens to be made to you and assigned by you to Mr. Silberman; why was that done?

A. Why only that I felt that I ought to give Mr. Silberman an assignment of the mortgage, more or less only for the purpose of being someone in title between to make the assignment to Mr. Silberman.

Q. Your idea was that if you took the mortgage and sold it to Mr. Silberman that there would be no violation of the Usury Act, wasn't that it? 20

A. My impression seemed to be if you sold a mortgage it was perfectly all right.

Q. That you would, that by this sale you would evade this Usury Act, isn't that true?

A. That is possibly what we had in contemplation.

Q. That is what you had in mind?

A. Yes.

Q. You didn't pay any money to the title company for this mortgage? 30

A. No, sir.

Q. You had no interest at all except to act as a dummy or straw owner for the purpose of evading the Usury Act?

A. For the purpose of making the assignment.

Q. The purpose of making the assignment was to evade the law on usury, wasn't it, Mr. Finn? You

had made this contract between Silberman and Cades for this purpose, hadn't you? They had both agreed upon it, isn't that true?

A. Yes, that it true.

Q. Now one of the devices that you thought was necessary would be to take the mortgage in your name before and sell it to Mr. Silberman, isn't that true?

A. Yes.

10

Cross-examination.

By Mr. Cole:

Q. What was your business?

A. At that time real estate.

Q. Where was your office?

A. At that time 49 South Virginia Avenue.

20

Q. Did you know Mr. Silberman at that time?

A. Yes, I knew him, not very intimately, but I had met him.

Q. How did you come to get into this matter?

A. We were real estate brokers at the time.

Q. Who brought it to your attention?

A. Mr. Cades asked me to see what I could do about selling a ten thousand dollar mortgage, for him, placing a ten thousand dollar second mortgage for him and I either knew or had spoken to Mr. Silberman before that he was interested and had took mortgages, an associate of mine, Mr. Cohen and myself, went up to see him and we have made all the arrangements we could with Mr. Silberman and then submit them to Mr. Cades.

30

Q. Who suggested the making of this mortgage to you and the assignment by you to Mr. Silberman?

A. My own suggestion.

Q. What?

A. My own suggestion.

Q. To whom was Mr. Silberman's check drawn?

A. Why, I don't recall, but I am inclined to believe it was to the South Jersey Title and Finance Company—I don't believe I—I am quite positive I had nothing to do with the endorsement of the check.

Q. Wasn't it drawn to your order and didn't you endorse it over?

A. Not to my recollection. 10

Mr. Reed: Like to have you produce the check if you have it.

Q. Where were you when Mr. Cades came to you about this?

A. Where was our place of business, Judge, is that what you have in mind or just where did I meet Mr. Cades?

Q. Where were you, actually, physically, when he came to you? 20

A. I don't recall, Judge. I may have met him on the street or he may have come into the office.

Q. Were you paid for your services by Cades?

Mr. Reed: I object, your Honor pleases; it is not cross-examination.

Mr. Cole: Like to show who he represented.

The Court: I will permit it. 30

A. The company that I was associated with at the time received a commission from Mr. Cades for negotiating the loan.

Mr. Reed: I ask counsel to produce the check.

Mr. Cole: Mr. Silberman says that he thought I had the check. I don't seem to have it. He also says that the witness is correct when he says the check was drawn to the South Jersey Title.

Mr. Reed: Is it admitted that this check was drawn to the South Jersey Title and Finance Company?

10 Mr. Cole: That is correct, isn't it?

Mr. Silberman: Yes, sir; that is correct.

Mr. Reed: I am willing to have the admission stand.

ELLIOTT CADES, SWORN.

20 Direct examination.

By Mr. Reed:

Q. Are you related to Isaac Cades?

A. A son.

Q. Do you know anything about Isaac Cades, Inc., of which you have signed papers as secretary?

A. Very little.

30 Q. You signed these papers as secretary, didn't you, Mr. Cades?

A. Yes.

Q. Why did you sign them as secretary of the Isaac Cades, Inc.?

Mr. Cole: Objected to as irrelevant and immaterial.

The Court: Permit it.

Q. Why did you sign the papers as secretary?

A. My father told me it would be necessary to do that sort of thing in order to raise money on mortgage.

Q. Now was there ever any meeting of the incorporators of this company?

A. No.

Q. Was there ever any meeting of the directors 10
of this company?

A. No.

Q. Was there any meeting held of this company at which at any time any officers were elected?

A. No.

Q. Did you pay anything into the treasury of Isaac Cades, Inc., for the stock?

A. No.

Q. Was there any stock ever issued to you?

A. No.

Q. Now by the certificate of incorporation, which I hold in my hand, it appears that this company was organized on the ninth of April, 1926. Is that true? 20

A. I don't know.

Q. Whatever this certificate says you are willing to admit as the truth with respect to the date, is that right?

A. Yes, I think so.

Cross-examination.

30

By Mr. Cole:

Q. You are the son of Isaac Cades?

A. Yes, sir.

Q. Have you the minute book of the corporation here?

A. Yes, I saw that.

Q. Is that the book you have in your hand?

A. Yes, that is the book.

Q. Are these minutes true or correct?

A. In what sense? I signed my name to these.

Q. Are they true?

A. Well, I signed them; I suppose they are.

Q. Your name is Elliott?

A. Elliott, yes.

10 Q. You were the secretary?

A. Yes.

Mr. Cole: I want to offer these minutes.

(Minute book marked C5 for identification.)

Mr. Reed: I object.

20 Q. Are you the secretary?

A. Yes.

Mr. Reed: I object to that question, if your Honor please; he has already said he signed this under direction of his father, that there was never any meeting held at which any officers were ever elected.

The Court: He is now being cross-examined on that fact. I admit it.

30 Mr. Reed: I object to the form of the question, your Honor please. He says "did you sign as secretary?"

Q. Are you?

A. I didn't sign as secretary, here is the point

Q. I am asking you whether you are the secretary of this company?

A. Well, if there is such a company I must be the secretary, I suppose. I signed certain papers now—

Q. You have said already, haven't you, that this is the minute book of the company?

A. Yes.

Q. That is correct, isn't it?

A. That is correct, yes.

10

Q. And your name appears here, doesn't it, as secretary and vice president?

A. That is right.

Q. That is correct, isn't it?

A. That is correct.

Mr. Cole: I offer these minutes.

Mr. Reed: I object.

20

The Court: They may be marked for identification.

Q. I call your attention to the mortgage on which there is the following: "State of New Jersey, Atlantic County: Be it remembered that on this twenty-seventh day of December, in the year of our Lord one thousand nine hundred and twenty-six, before me, the subscriber, a Notary Public of New Jersey, personally appeared Elliott Cades"—that is you, is it? 30

A. Yes, sir.

Q. — "who being by me duly sworn according to law did on his oath say that he is the secretary of the Isaac Cades, Inc., a corporation of the State of New Jersey, the grantor mentioned in the foregoing

indenture; that he knows the seal of said corporation; that the seal affixed to the said indenture is the common seal of the said corporation; that Isaac Cades is the president of said corporation and did, by its order, sign, seal and deliver the said indenture as its voluntary act and deed in the presence of said deponent and that the said deponent did, at the execution thereof, subscribe his name as a witness thereto." Signed "Elliott Cades." Sworn and
10 subscribed before me the day and year aforesaid, John B. Cook, Notary Public of New Jersey." I ask you whether that Elliott Cades is your signature?

A. Yes, sir.

Q. I ask you if you did swear to that before Mr. Cook?

A. Yes, I swore to it.

Q. I ask you whether the affidavit is true?

A. Yes.

20 Q. Now I see in this minute book a resolution authorizing the company to borrow; was that resolution passed?

A. No, sir.

Q. Who drew it?

A. I don't know. I didn't. I don't know anything about it. It is my signature on it.

Q. It has your signature to it, doesn't it?

A. Yes, sir; it does.

Q. As secretary?

30 A. As secretary.

Q. And the company got the proceeds of that mortgage loan, didn't it?

A. I don't know anything about that.

Q. Do you know where the money went?

A. No, sir.

Mr. Reed: We will show where the money went.

Mr. Cole: Mr. Reed, if you don't mind; I will examine the witness?

Q. Where is the seal of this company? Have you got it with you?

A. No, sir.

Q. Does it have a seal?

A. There was a seal, yes, sir.

Q. The seal was affixed to this mortgage, wasn't it?

10

A. Yes.

Q. You put it there, didn't you?

A. No.

Q. Who did, do you know?

A. I think the man at whose office we were.

Q. South Jersey Title?

A. Yes.

Q. Mr. Cook?

A. I don't know who did it. I didn't affix the seal.

20

Q. It was affixed to the mortgage when it was executed in the Title Company's office, wasn't it?

A. That I don't know.

Q. Were you there at the settlement?

A. I am not certain.

By Mr. Reed:

Q. Why did you sign the mortgage?

30

Mr. Cole: I object.

The Court: I will permit it.

Mr. Reed: I think he has a right to explain.

The Court: I have permitted it.

Q. Go ahead, sir.

A. I signed, I made all these signatures at my father's request, but my father needed money for his property, needed money on his property and told me that a certain form, a certain legal form was necessary and that I had to, in order to secure money for him, certain papers would have to be signed and I signed those papers.

10 Q. Prior to signing the papers there had never been any election of directors of this company?

A. Absolutely not.

Q. There had never been a board of directors' meeting?

A. No.

Q. And you were never elected secretary or director?

A. No.

Q. And you never put any money into the company's treasury for your stock?

20 A. That is right.

Q. And you absolutely had no interest in the property which the company was alleged to have owned, was that true?

A. Certainly.

Q. Was the affidavit that you signed on this mortgage read to you in full at the time?

A. No, I signed papers that were given to me at the time.

30 Q. Were you told or was the contents of the affidavit read to you as Judge Cole read?

A. No, they were not.

Q. And your interest in this matter was to do as you were told by your father, sign such papers as necessary for him to get this money?

A. That is right.

Q. That is what you did?

A. Yes.

Mr. Cole: Your father is dead, isn't he?

A. No. My father is here.

By Mr. Cole:

Q. How old are you?

A. Twenty-eight.

Q. What is your business?

A. I am a teacher.

10

Q. What?

A. I am a teacher.

Q. How long have you been a teacher?

A. About three years.

Q. Did you know you were signing an affidavit to that mortgage?

A. No, I don't think I did.

Q. You weren't told by Mr. Cook, who took your affidavit, that you were signing an affidavit?

A. I am not certain.

20

Q. You are in doubt about it, are you?

A. I am in doubt about it, yes, sir.

Q. This corporation still owns this land, doesn't it? Title is still in it, isn't it?

Mr. Reed: I object.

The Court: I will permit it.

A. I don't know.

30

Mr. Reed: My idea of objecting was it is not the way to prove it.

The Court: That is true.

ISAAC CADES, SWORN.

Direct examination.

By Mr. Reed:

Q. What is your name?

A. Isaac Cades.

10 Q. Are you the beneficial owner of the premises described in this bill of complaint known as the Cades Court Apartment?

A. Yes, sir.

Q. How long have you been such owner?

A. Ever since that was in existence.

Q. How long has it been since you came to Atlantic City, Mr. Cades?

A. Six years, about.

20 Q. Is this the deed that conveyed to you the title to the property in this suit?

A. Yes, sir.

Q. Did you pay the consideration in that deed?

A. Yes, sir.

Q. How much did you pay?

A. Thirty thousand dollars.

Q. How much?

A. Thirty thousand dollars.

Q. In cash?

A. In cash.

30 Q. How much mortgage was there on it?

A. About forty thousand.

(Deed offered in evidence from Rose West, et als., to Isaac Cades.)

Mr. Cole: Objected to as irrelevant and immaterial.

The Court: I will permit it.

(Deed admitted and marked Exhibit D2.)

Q. After the deed to this property was made to you did you enter into possession and occupy it?

A. Yes, sir.

Q. Are you still in possession and occupying it?

A. Yes, sir.

Q. In what condition did you find the premises mentioned in this bill of complaint, deed and mortgage? 10

A. Why, when I bought it, it needed considerable improvements.

Q. Now did you undertake to make the improvements?

A. Yes, sir.

Q. Were they made?

A. Yes.

Q. How did you arrange to pay for those improvements? 20

A. By negotiating a bigger mortgage.

Q. During the negotiations for this mortgage with Mr. Silberman did you agree to pay an unlawful bonus of, fifteen hundred dollar bonus?

Mr. Cole: I object to that.

The Court: Sustain the objection.

30

Mr. Cole: Entitled to have the agreement in the first place; no evidence here that they negotiated with Mr. Silberman.

Q. Did you negotiate with Mr. Finn for this loan?

A. Yes, sir.

Q. Did Mr. Finn tell you that he was the agent for Max Silberman?

A. Yes.

Mr. Cole: Objected to as being leading.

The Court: Sustain the objection.

10 Q. As the result of your negotiating and contract with Mr. Finn, did Max Silberman advance to you eighty-five hundred dollars?

A. Yes, sir.

Q. Did there finally come a time when it was necessary to make a deed for this property from Isaac Cades, et ux, to Isaac Cades, Inc.?

A. Yes, sir.

Q. I show you this deed. Did you receive any consideration of any kind?

A. Not at all.

20 Mr. Cole: Objected to as irrelevant and immaterial.

The Court: I will permit it.

Q. Did you deliver this deed to yourself?

A. This deed wasn't handled by anybody. This was given to me. It was just a matter of form.

Q. Why did you make the deed?

30 (Deed offered, received in evidence and marked Exhibit D3.)

Q. Why did you make the deed?

Mr. Cole: Objected to as far as we are concerned, irrelevant and immaterial.

The Court: I will permit it.

Q. What was the purpose of making this deed?

A. This was a device and scheme to evade the Usury Act and that was the only way that I could get the loan through.

Q. You were one of the organizers of the Isaac Cades, Inc., were you not?

A. In name only.

Q. You were one?

10

A. Yes.

Q. Who were the other organizers?

A. There was no organizers.

Q. Who signed the certificates with you, Mr. Cades?

A. My sons.

Q. Your two sons?

A. Yes.

Q. What was their names?

A. One was Julius Cades and one was Elliott Cades? 20

Q. After the execution of this certificate of incorporation by yourself and sons did you ever pay any of the capital stock into the treasury of that company?

A. No, sir.

Q. Did any of your sons ever pay any money?

A. No, sir.

(Certificate offered, received in evidence and 30 marked Exhibit D4.)

Q. Was there ever held an organization meeting of the incorporators of that company?

A. No meeting.

Q. Were any directors ever elected?

A. No, sir.

Q. Were any officers ever elected?

A. No election was ever held.

Q. Did the directors of this company ever hold a meeting?

A. No, sir.

Q. What became of the money that you received as the proceeds of this loan from Max Silberman?

10 A. I deposited it to my personal account.

Mr. Cole: Objected to as irrelevant and immaterial.

The Court: Permit it.

Q. Have you the deposit book here?

A. Yes, sir.

Q. Is this the deposit book?

A. This is the deposit book.

20 Q. Atlantic Safe Deposit and Trust Company in account with Isaac Cades?

A. Yes, sir.

Q. 16 South Connecticut Avenue?

A. Proceeds of that note was deposited.

Q. Is this the item here, 12/27 cash \$6767.71?

A. That is right, yes, that was the proceeds of that settlement.

Q. And that was deposited to your own personal credit?

30 A. Yes, sir.

Q. And disbursed by you?

A. Yes, sir.

(Deposit book offered in evidence.)

Mr. Cole: Objected to as irrelevant and immaterial.

The Court: Permit it.

(Book admitted and marked Exhibit D5.)

Q. After the execution of the deed to Isaac Cades, Inc., who remained in possession of this property?

A. Myself.

Q. Who took the rents, issues and profits?

A. Myself as usual.

Q. Are you now in possession of the property? 10

A. Yes, sir.

Q. Did the making of this deed to this corporation affect the management of this apartment house?

A. Not in any shape or form.

Q. Are you still in possession?

A. Yes, sir.

Q. Do you still take the rents, issues and profits?

A. Yes, sir.

Q. Have you any leases for any of the apart- 20
ments that are rented in this apartment house?

A. Some kind of form of lease, (Producing paper.)

Q. Witness shown what appears to be a memorandum lease with H. Knox, 16 second Cades Court, and I want to ask you whether that is one of the leases that you used in the leasing of your apartments?

A. Yes, sir.

Q. Is this person still in occupancy? 30

A. Yes, sir.

Q. Do they pay rent?

A. Yes, sir.

Q. Who do they pay it to?

A. To me.

Q. What becomes of it?

A. I dispose of it.

(Lease offered, received in evidence and marked Exhibit D6.)

Q. During the past two years have you paid any interest to this complainant, Max Silberman?

A. Yes, sir.

Q. Did you pay the full amount of interest on ten thousand dollars?

A. Yes, sir.

10 Q. Is that a check?

A. Yes, sir.

Q. Is that your check?

A. Yes, sir; that is my personal check.

Q. Is that your personal check?

A. Only checks I use. I have no other accounts.

Q. Was this paid out of your own personal account?

A. Yes, the only account I have.

20 (Check offered, received in evidence and marked Exhibit D7.)

Q. Mr Cades, has anyone besides yourself any beneficial interest in the Cades Court apartment house?

A. No, sir.

Q. Has anyone besides yourself and these mortgagees any money in this property?

A. No, sir.

30 Q. To whom does the beneficial use and actual title of this property actually stand today?

A. My own.

Q. What is your business?

A. Just at present?

Q. No, what was your business?

A. I was in the retail shoe business.

- Q. How old are you?
A. Fifty.
- Q. How long were you in the retail shoe business?
A. About twenty-eight years.
- Q. Where were you in the retail shoe business?
A. In Philadelphia.
- Q. Whereabouts in Philadelphia.
A. On the corner of Twenty-ninth and Dauphin.
- Q. That is right opposite the North Penn Bank? 10
A. Bank.
- Q. Finally it there where you made the money that you invested in this property?
A. Yes, sir.
- Q. What happened to that business?
A. I sold it out and came to Atlantic City.
- Q. Did you sell the business out and the property?
A. I sold the property and business and the proceeds was invested here.
- Q. And the result of your twenty-nine years in 20 the shoe business and the property that you sold amounting to some thirty thousand dollars you put in the purchase of this Cades apartment house, is that right?
A. That is right.
- Q. At the time of the making of this mortgage did Herman J. Finn produce any money?
A. No, sir.
- Q. Whose money was it that was produced at the settlement? 30
A. Max Silberman's.
- Q. Had you agreed with Finn to pay fifteen hundred dollars bonus for this loan?
A. Yes, sir; I have. I have made a contract for the payments.
- Q. And you only received, as I understand it, eighty-five hundred dollars, less the charges?

A. Yes, sir.

Q. And that you received personally?

A. Yes.

Cross-examination.

By Mr. Cole:

Q. How did it happen that you received only
10 sixty-seven hundred and some odd dollars?

A. That was—the settlement sheet is here for that, there was taxes paid, and so forth.

Mr. Reed: Here is the settlement certificate.

A. The deposit was \$8500. The Cades Company
received \$190, that was the Cades Company; Gorson
& Gorson, lawyers' fee \$20.00; recording mortgage
\$3.50; declaration \$2.50; recording assignment
20 \$2.50; policy assignee \$78.00; taxes \$1398.51; inter-
est \$37.28; the proceeds was \$6767.71.

Q. When did you first learn that this plan that
you speak about was a device and scheme to defeat
the usury law?

A. As soon as I began to negotiate for the loan.

Q. You were willing to be a party to that, of
course?

A. Yes, sir.

Q. Is the title to this property still in the corpo-
30 ration?

A. No, I have transferred it in my name but I
haven't recorded it.

Q. You have not?

A. No, I have not.

Q. Where is that deed?

A. I have got the deeds here.

Q. Let me see that, won't you?

Mr. Reed: I haven't got it.

The Court: There is none presented from the corporation to him.

Q. Where is the deed from the corporation back to you?

A. Oh, I have that made up just for myself, only for myself.

10

Mr. Reed: Where is it?

A. I haven't got it here.

Q. Why did you do that?

A. It was my intention to have it transferred a long time ago, but I never found it necessary to go to the trouble of having it recorded, I had that written already a couple of years ago.

Q. It is your property, isn't it?

A. It is my property, always was.

20

Q. Why haven't you put it back in your name?

A. Because it didn't make any difference, my business was transacted the same as formerly, I haven't changed my name at the bank, for any rent negotiations or for any other purpose, my bank is aware of this fact and they have never asked me I own these properties.

Q. This check from the title company was drawn to Cades, Inc., wasn't it?

A. Necessarily, they made the papers out themselves.

Q. I am asking you that was drawn to Cades, Inc., wasn't it?

A. That I can't remember, how it was drawn. I can't remember that. I don't know who the check was drawn to. I received it at the settlement.

Q. I show you a check from the South Jersey Title Company, dated December 26, 1926, to the order of Isaac Cades, Inc.

A. Yes, incorporated.

Q. Is that the check you received?

A. Yes.

Q. Haven't any trouble about it now, have you, knowing it was drawn to the corporation?

10 Mr. Reed: I object to that.

The Court: Sustain the objection.

Q. That is your name on the back of it, Isaac Cades, President?

A. Yes, sir.

Q. Were you the president?

A. In name.

20 Q. Were you the president?

A. As much as I am now, yes, if you call it so.

The Court: Answer the question, Mr. Cades, if you can.

Q. Were you the president?

A. Yes.

Q. What?

A. Yes.

30

(Check marked C6 for identification.)

Mr. Reed: We have no objection to that going in evidence.

(Check admitted and marked Exhibit C6.)

Q. You produce a lease from yourself to somebody?

A. From me, a memorandum that we use for our tenants, showing who is the owner.

Q. Did you make that lease to that tenant?

A. Yes.

Q. After the title to this property was put in the corporation?

A. Yes.

Q. Did you tell this tenant when you gave him 10 this lease that the title was in the corporation and not in you?

A. No, sir.

Q. Why didn't you?

A. Because I never carried on my business in the name of the corporation.

Q. You knew the title was in the corporation, didn't you?

A. No, the title was in myself because I was the owner of it all the time.

20

Q. Do you mean to say in the face of the deed here to Isaac Cades, Inc.—I will show it to you—that the title was not in the corporation.

A. This was the scheme for the money.

Q. I am not asking you that, sir; that is what you said before. I want to know whether or not you don't know that title was in that corporation?

Mr. Reed: I think the deed speaks for itself.

30

The Court: Permit the question.

A. If I knew? Yes.

Q. Did you tell the tenants, when you signed the leases in your own name, that you did not own the property?

A. No.

Q. Why didn't you?

A. Because I owned it.

Q. Then, if you own it, why haven't you recorded the deed back to yourself from the corporation?

A. Why for no—I haven't recorded it yet, but

Q. Why haven't you?

10 A. Well, I thought it was in time to show to anybody that I was the proper owner of it instead of explaining this here scheme.

Q. Had you any other purpose in keeping this title in the corporation when you say it belonged to you?

A. No other purpose only to make this loan.

Q. Were you there on the day of the settlement at the title company?

A. Yes.

20 Q. Who made the settlement with the title company?

A. I can't say that, who made the settlement.

Q. Did you tell the title company that this company did not own the property but that you owned it?

A. Was no question like that.

Q. I am asking you, did you tell the title company, or the man who made the settlement, that the company did not own this property, but that you owned it?

30 A. I don't think they asked me such questions; how could I tell them; they didn't ask me.

Q. Sometimes people state things without being asked. I am asking you whether you told them?

A. I don't think I did.

Q. Did you see your son sign the affidavit to this mortgage?

A. Yes.

Q. Was it read to him?

A. No.

Q. Was he told what it was?

A. No.

Q. Did he read it?

A. No, he didn't read it; he just signed at my request.

Q. You incorporated in April, 1926?

A. Right.

Q. This mortgage was made in December, 1926, 10 is that right?

A. Yes, sir.

Q. What were you doing between April, 1926, and December, 1926, in an effort to get money?

A. I was negotiating it.

Q. Who suggested to you that you should incorporate?

A. Why, the first people that I came to loan this money.

Q. Who was it who suggested that you incorporate 20 rate?

A. The Mortgage Guarantee Trust Company, Mortgage Company of Baltimore.

Q. Where?

A. Baltimore.

Q. It was at the request of that mortgage company that you incorporated with a view of getting money from the mortgage company, is that correct?

A. The entire amount, yes.

Q. And you got a first mortgage, didn't you? 30

A. Yes.

Q. For how much?

A. Fifty thousand.

Q. In the name of the corporation?

A. Yes.

Q. So that you really incorporated in April at the suggestion of the Mortgage Company of Balti-

more and you got fifty thousand dollars as a result, did you?

A. Yes.

Q. Is that in the bank book, deposit?

A. Very likely. Oh, that deposit or \$50,000?

Mr. Reed: Show him the settlement certificate. There was a mortgage paid off.

10 A. Have you got the settlement certificate?

Mr. Reed: I haven't any settlement certificate for that mortgage, but you have.

Q. Then after you got this fifty thousand dollars from the mortgage company you concluded you had to have some more money, didn't you?

A. No.

Q. Did you have to have some more money?

20 A. Yes, but that loan was ——

Q. Then seeing that you needed more money you negotiated for another mortgage, didn't you?

Mr. Reed: I object to Judge Cole testifying. That is not just exactly the way he should ask these questions, because he is putting words in the mouth of the witness that are different from what the witness will tell if he is asked these same questions.

30 The Court: He is cross-examining.

Mr. Reed: I know, if your Honor please; can he testify?

The Court: No.

Mr. Reed: I object to the form of the question.

The Court: Permit it. The witness may answer it.

(Question repeated.)

A. Yes.

Q. Who was the first person you saw about getting the money for you?

A. Mr. Finn.

Q. And he got it, didn't he? 10

A. He agreed to get it for me for a consideration.

Q. And you paid him for getting it?

A. I didn't pay him. He says that would be the amount.

Q. It was taken out of the settlement?

A. Sure, there was a contract made between me and Mr. Silberman that I should pay fifteen hundred dollars.

By Mr. Reed: 20

Q. Now, Mr. Cole has had you say certain things about the negotiations of these loans —

Mr. Cole: I want to object to the form of the question. I haven't had him to say anything.

The Court: Sustain the objection.

Q. Mr. Cole has, in the form of the question 30 which he asked you, put words in your mouth for which you have answered "yes" and I think erroneously. When you started to negotiate for a loan to pay for your improvements did you negotiate for sixty thousand dollars or fifty thousand?

A. Sixty thousand.

Q. And these negotiations were carried on with this mortgage guarantee company, isn't that true?

A. Yes, sir.

Q. And the result of that was that they finally loaned you \$48,000?

A. Yes.

Q. Did they at any time ever promise to loan you this sixty thousand dollars?

A. Yes.

10

Mr. Cole: I object as irrelevant and immaterial. It isn't re-direct.

The Court: Sustain the objection.

Q. At the time of the transfer of the property to this corporation to evade the Usury Act, you were looking for a loan of sixty thousand dollars, isn't that right?

20

A. Right, that is the reason.

Q. Judge Cole asked you what became of the loan that you received from the fifty thousand or forty-eight thousand dollar deposit; is this the settlement certificate?

A. Yes, sir.

Q. That you received?

A. I didn't receive any money. I paid money.

Q. You did?

A. Yes.

30

Q. What became of the proceeds of that loan, Mr. Cades?

A. There was no proceeds, there was a deficit.

Q. How is it disbursed? Just read how that \$48,000 was disbursed?

A. \$50,000, was supposed to be \$60,000 loan, therefore was deficit of four thousand dollars in

this settlement which I had to pay, first mortgage was \$25,000, interest \$208; another mortgage \$25,000, interest \$316; taxes \$771; deeds and so forth; you want me to read the items?

Q. Yes, read it all.

A. Deposit was \$48,000. Gormley got first mortgage \$25,000; interest \$208.34; mortgage 308/622, \$25,000, interest for this mortgage is \$316.27; cancellation \$2.00; taxes for 1925, \$771.04; interest \$30.84; deeds recording deed \$5.00; deed \$3.00; recording mortgage \$3.50; policy \$193.00; Wilson, that was the agent on that mortgage, \$500; \$25.00 some other charge. 10

Q. After that transaction there was money due?

A. There was a deficit of four —

Q. Who paid the deficit?

Q. Have you got the check with which you paid that deficit?

A. I have it but I haven't got it with me here.

Q. I would like to have the privilege of handing that check to your Honor and offering it in evidence when produced; is that all right, Judge Cole? 20

A. I will have the check to show there was a deficit of four hundred.

Q. Did you pay that deficit?

A. Yes.

Q. Out of your own personal funds?

A. Own personal funds, yes, sir.

Q. At that time did the property stand in the name of Isaac Cades, Inc.?

A. Yes, sir, Isaac Cades. 30

Mr. Reed: Judge Cole, he says he has a check showing this payment out of his own personal private funds of this deficit and I want to offer that, to send for it and get it; have you any objection to that?

Mr. Cole: To offering it?

Mr. Reed: Yes.

Mr. Cole: I think it is all irrelevant.

Mr. Reed: I don't think it is if he paid the deficit. You asked him what became of the money on this loan and opened up this subject yourself and
10 I think I have a right to show just exactly what this transaction was.

The Court: There is nothing before the Court at all.

Mr. Reed: Will you consent to my sending for that check?

Mr. Cole: Certainly.

20

Q. Will you get that check? Is there any way to get it?

A. I couldn't get it while the court is waiting for it. It will take longer than that.

Q. How long will it take to get it?

A. I would have to look, to take my cancelled checks.

Q. Don't make any explanation about how long. You will be given a chance to get it, I suppose.

30

A. I can bring it in this afternoon.

Q. Will you go when court adjourns and get the check and bring it here?

(Settlement certificate offered, received in evidence and marked Exhibit D8.)

By Mr. Cole:

Q. Mr. Cades, do you recognize this book, which has been marked for identification, as the minute book of your company?

A. Yes, sir.

Q. That is the minute book, isn't it?

A. Yes.

Q. Does it contain all the minutes of this corporation?

A. Yes.

Q. None have been taken out?

A. None have been taken out.

Q. Sure about that?

A. Not to my knowledge, no, sir; there wasn't any business transacted, that I know of.

DEFENDANT RESTS.

20

JOHN B. COOK, recalled.

Direct examination.

By Mr. Cole:

Q. Mr. Cook, did you, personally, attend upon this settlement for the mortgage from Cades, Inc., to Finn?

A. I did.

Q. Did you have anything before you to show the authority of the corporation to make this mortgage?

A. Yes, sir.

Q. What did you have?

A. A certified copy of a resolution.

Q. Will you produce that, please?

(Certified copy produced.)

A. Affidavit by the secretary and affidavit by Isaac Cades that he is the president of the Isaac Cades, Inc. There are the three papers there.

10 Mr. Cole: I want to offer those papers in evidence, first the certifid copy of the resolution.

(Certified copy received and marked Exhibit C7.)

(Affidavit of president received and marked Exhibit C8.)

20 “Resolved that Isaac Cades, Inc., a corporation of the state of New Jersey, borrow from Herman J. Finn, the sum of ten thousand dollars two years from December 27, 1926, together with interest thereon at the rate of six per cent per annum, payable semi-annually; for the purpose of securing the repayment of such sum this company make, execute and deliver to Herman J. Finn a bond and mortgage for ten thousand dollars payable at the expiration of two years from December 27, 1926, together with interest thereon at the rate of six per cent per annum, payable semi-annually; the said bond and mortgage to contain all the usual full tax and other
30 covenants and the said mortgage to cover the property of this corporation situate in Atlantic City, Atlantic County, New Jersey, more particularly described as follows:

Beginning in the Westerly line of Connecticut Avenue one hundred fifty feet Southwardly of the Southerly line of Atlantic Avenue, extending thence (1) Westwardly, parallel with Atlantic Avenue, one

hundred seventy-five feet; (2) Southwardly, and parallel with Connecticut Avenue fifty feet; thence (3) parallel with Atlantic Avenue one hundred seventy-five feet to the Westerly line of Connecticut Avenue; thence (4) Northwardly in and along same fifty feet to the place of beginning.

Be it further resolved that Isaac Cades, president of this corporation, be and he is hereby authorized to bind this corporation by any agreement which he may make in behalf of this corporation with respect to the cost and expenses of said loan in any matter or nature pertaining thereto. 10

Be it further resolved that said bond and mortgage shall contain any and all covenants and conditions in addition to those herein specifically provided for which shall be satisfactory to said Isaac Cades, President and execution of said bond and mortgage by him as president of this company shall be conclusive evidence of his satisfaction with and approval of said covenants and conditions. 20

Be it further resolved that said bond and mortgage made and executed by him for this corporation, under its corporate seal, attested by its secretary, Elliott Cades and signed by its president Isaac Cades.

I hereby certify the above resolution was passed at a meeting of the directors of the Isaac Cades, Inc., a corporation of the state of New Jersey, on December 27, 1926. Elliott Cades, Secretary" with the seal of the corporation. 30

“State of New Jersey, }
County of Atlantic, } ss.

Isaac Cades, of full age, being sworn on his oath according to law, deposes and says:

I am the president of the Isaac Cades, Inc., owner of premises known as 14 and 16 South Connecticut avenue; that there has been no work done or material delivered upon the said premises for a period of four months last past for which mechanics' lien claims could be filed.

Isaac Cades.

10 Sworn and subscribed before me this twenty seventh day of December, 1926.

John B. Cook.

Notary Public of New Jersey."

Q. Are you the notary public that took this?

A. Yes, sir.

Q. Why did you exact that affidavit from Mr. Cades?

20 A. We wanted to know that—well, if you want me to go into an explanation about it, there is an exception that always appears on the exception sheet of every application, that is exception number three pertaining to mechanics' lien claims not filed or of record. The mortgagee required that that exception be removed. The only way we could remove it was by an affidavit of somebody who was familiar with the premises. We accepted Mr. Cades as being president of the corporation as being familiar with the premises and took his affidavit accordingly.

30 Q. Have you any recollection as to whether or not that affidavit to the mortgage signed before you as notary by Elliott Cades was read by him or read to him?

A. Whether the affidavit itself was read to him I cannot at this time say, but I do know that he understood what he was signing, that the paper itself was

explained to him and he acknowledged it as secretary.

(No cross-examination.)

(Minute book offered, received in evidence and marked Exhibit C5.)

10

MAX SILBERMAN, recalled.

Direct examination.

By Mr. Cole:

Q. Did you ever meet Mr. Isaac Cades in connection with this loan?

A. No, sir.

Q. Did you have anything to do with his incorporating this company? 20

A. Nothing at all. This man here?

Q. Were you ever told before you took an assignment of this mortgage that he had incorporated this company for the purpose of defeating the usury law?

A. No, sir.

Q. Whom did you meet in connection with taking this mortgage?

A. This man, Mr. Finn and his partner. 30

Q. Mr. Finn?

A. Who was it, Mr. Cohen?

Q. Did Mr. Finn tell you that this was a usurious mortgage?

A. No, sir.

Q. Did you know that it was?

A. What do you mean?

Q. Did Mr. Finn tell you the mortgage was usurious?

A. No, sir.

Q. Did he tell you that they had incorporated this company?

A. He says it is an incorporated mortgage and I went down and looked at the property and I bought it.

10 Q. You took the assignment from Mr. Finn?

A. Yes, sir.

Q. Did you do that in good faith thinking that he owned that mortgage?

A. I never, when I bought mortgages I always went over to the title company and turned my check over and they handled it for me.

Q. Turned it over to the title company?

A. To the title company.

Q. And they insured your mortgage?

20 A. And they insured my mortgage.

Cross-examination.

By Mr. Reed:

Q. Why were you told that this was a corporation mortgage?

A. Because I wouldn't buy anything else.

30 Q. You know very well that a fifteen hundred dollar bonus is unlawful, don't you, on an ordinary mortgage?

A. No, sir.

Q. You don't?

A. I don't know. I didn't buy any.

Q. Did you ever hear of the usury law?

A. No, I don't know nothing about it.

Q. You never heard about usury? Do you know what the legal rate of interest is in the State of New Jersey?

A. No.

Q. You never heard anything about usury?

A. I have heard you talking now.

Q. You have heard talk about usury?

A. Yes, I know what the word means, usury; that is what I know.

Q. You know very well when you received more than six per cent on the loan of a hundred dollars, or six dollars on the hundred dollars, it is unlawful, don't you? 10

Mr. Cole: I don't see it makes any difference may it please your Honor and I object to it.

The Court: Sustain the objection.

COMPLAINANT RESTS.

20

ISAAC CADES, recalled.

Direct examination.

By Mr. Reed:

30

Q. You heard Judge Cole read the resolution into the record as to the authorization of this ten thousand dollar loan?

A. Yes, sir.

Q. Who prepared that resolution?

A. This was all prepared in the settlement office.

Q. Who prepared it? Did you have anything to do with the preparation of this resolution?

A. No, sir.

Q. Did the board of directors ever pass on it?

A. Did what?

Q. Did the board of directors ever pass on it?

A. We had no board of directors.

Q. They didn't pass on the resolution, did they?

A. No.

10 Q. Did you ever borrow any ten thousand dollars from Herman J. Finn?

A. No.

Q. The affidavit that was presented as to the mechanics' lien has a statement in it that you were president of that company. Were you ever elected president of that company?

A. I wasn't elected.

Q. Was there anybody elected to any office?

A. No, sir.

20 Q. You knew the condition as to whether a mechanics' lien could be filed against your property, did you not?

A. Yes.

Q. And the preliminary statement that you were president of the company had nothing to do with that, did it?

A. No, sir.

30 Q. Was it true at the time you made that affidavit that no mechanics' lien could be filed against the property?

A. Yes, that was true.

Cross-examination.

By Mr. Cole:

Q. Mr. Cades, did you know that the title company was requested to insure this mortgage?

Mr. Reed: I object.

The Court: Permit it.

10

A. I didn't quite get your question.

(Question repeated.)

A. Yes.

Q. Knowing that you permitted your son to certify a resolution drawn by the title company to the effect that the directors of this company had authorized the execution of this mortgage, didn't you?

20

Mr. Reed: I object. If your Honor please, he has no right to ask such a question on cross-examination. It is perfectly apparent that that happened. Reiteration of that. It hasn't anything to add to the evidential weight of the evidence.

(Question repeated.)

The Court: I will permit it. You may answer. 30

A. This was made up, not by myself. I authorized my son to sign all the papers that they had ready for him to sign and he signed.

Q. Were you there when he signed this?

A. He didn't sign there, he signed before the settlement because he had to go away.

Q. Did you know that he had signed it?

A. Yes.

Q. Did you take it to the title company? How did it get there?

A. It was in the title company's office but not at the time of the settlement when he signed it.

Q. Did you take it to the title company?

A. No, I didn't take those papers.

10 Q. How did the title company get possession of that certificate?

Mr. Reed: I object, doesn't make any difference.

The Court: I will permit it if he knows. If he doesn't, he may say so.

Q. Do you know how it got there?

A. The papers were all drawn up by them.

20 Q. And your son signed this certificate, you say he didn't sign it in the title company?

A. He signed it in the title office but not at the time of settlement.

Q. Were you there when he signed it?

A. Yes.

By Mr. Reed:

Q. Mr. Cades, he signed that at your request?

A. Yes.

30 Q. As a part of the scheme to evade the Act on usury, is that right, to get the money?

A. Yes.

BOTH SIDES REST.

EXHIBIT C1.

Bond, Isaac Cades, Inc., to Herman J. Finn, dated December 27, 1926, in the sum of ten thousand dollars (\$10,000).

10

EXHIBIT C2.

2/20/30

Mortgage, Isaac Cades, Inc., to Herman J. Finn, dated December 27, 1926, for \$10,000.

STATE OF NEW JERSEY }
ATLANTIC COUNTY } ss.

20

BE IT REMEMBERED, that on this 27th day of December in the year of our Lord one thousand nine hundred and twenty-six before me, the subscriber, a Notary Public of New Jersey personally appeared ELLIOT CADES who, being by me duly sworn according to law, did on his oath say that he is the Secretary of the ISAAC CADES INC. a corporation of the State of New Jersey, the grantor mentioned in the foregoing indenture; that he knows the seal of said Corporation; that the seal affixed to the said indenture is the common seal of the said Corporation; that ISAAC CADES is the President of said Corporation and did by its order sign, seal and deliver the said indenture as its voluntary act and deed in the presence of said de-

30

ponent; and that the said deponent did, at the execution thereof subscribe his name as a witness thereto.

ELLIOT CADES

Sworn and subscribed before me the day and year aforesaid.

John B. Cook
Notary Public of N. J.

10

EXHIBIT C3.

2/20/30

20 KNOW ALL MEN BY THESE PRESENTS
THAT I, HERMAN J. FINN, of the City of Atlantic City, County of Atlantic and State of New Jersey, for and in consideration of the sum of EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$8,500.00) lawful money of the United States of America to me in hand paid by MAX SILBERMAN, of the City of Atlantic City, County of Atlantic and State of New Jersey, at or before the
30 ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said MAX SILBERMAN, his heirs, executors, administrators and assigns a certain INDENTURE OF MORTGAGE, bearing date the Twenty-Seventh day of December in the year of our Lord one thousand nine hundred and twenty-six made and executed by ISAAC CADES INC., a corporation of the State of New

Jersey, to HERMAN J. FINN, to secure the sum of TEN THOUSAND DOLLARS (\$10,000.00), payable at the expiration of two years from the date thereof, with interest at six per cent., and covering ALL that certain lot, tract or parcel of land and premises situate, lying and being in the City of Atlantic City, in the County of Atlantic and State of New Jersey, bounded and described as follows: BEGINNING IN the Westerly line of Connecticut Avenue, one hundred and fifty feet Southwardly of the Southerly line of Atlantic Avenue, and extending thence (1) Westwardly, parallel with Atlantic Avenue one hundred and seventy-five feet; thence (2) Southwardly, parallel with Connecticut Avenue fifty feet; thence (3) Eastwardly, parallel with Atlantic Avenue one hundred and seventy-five feet to the Westerly line of Connecticut Avenue; thence (4) Northwardly, in and along same fifty feet to the place of beginning;—which mortgage is intended to be forthwith recorded in the Atlantic County Clerk's Office at May's Landing, New Jersey. 10

TOGETHER WITH THE Hereditaments and Premises in and by the said Indenture of Mortgage particularly described and granted, or mentioned and intended so to be, with the appurtenances, TOGETHER with the bond or Obligation in said Indenture of Mortgage mentioned, and thereby intended to be secured, and all moneys due and to grow due thereon, and the Warrant of Attorney to confess judgment thereto annexed; and all my estate, right, title, interest, property, claim and demand in and to the same. 20 30

TO HAVE AND TO HOLD the same unto the said MAX SILBERMAN, his heirs, executors, administrators and assigns, to his and their proper use, benefit and behoof forever, subject nevertheless

to the equity of redemption of said ISAAC CADES INC., a corporation of the State of New Jersey Mortgagor in the said Indenture of Mortgage named and its successors and assigns therein.

IN WITNESS WHEREOF, I the said HERMAN J. FINN, have hereunto set my hand and seal this Twenty-Seventh day of December in the year of our Lord one thousand nine hundred and twenty-six.

10 Herman J. Finn (SEAL)
Signed, Sealed and Delivered
in the presence of
John B. Cook

STATE OF NEW JERSEY }
ATLANTIC COUNTY } SS.

20 BE IT REMEMBERED THAT on this 27th day of December in the year of our Lord one thousand nine hundred and twenty-six before me, a Notary Public of New Jersey personally appeared HERMAN J. FINN who, I am satisfied, is the grantor mentioned in and who executed the within deed and I having first made known to him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed.
30 All of which is hereby certified.

John B. Cook
Notary Public of N. J.
Returned Jan 21 1927
Wm. A. Blair
Clerk

19006—10

Dec 27 1926

12/28/26

7701

ASSIGNMENT OF MORTGAGE

HERMAN J. FINN
TO
MAX SILBERMAN

Received in the Clerks office of the
County of Atlantic on the 28th day of
Dec. A. D. 1926 at 9 o'clock in the fore
noon, and recorded in Book #87 As-
signment of Mortgages for said
County on pages 92 etc.

10

William A. Blair, Clerk A. O.

20

EXHIBIT C4.

2/20/30

Declaration of no off-set, Isaac Cades, Inc., to
Max Silberman, dated December 27, 1926, in the
sum of ten thousand dollars (\$10,000).

30

EXHIBIT D1.

2/20/30 L.

This check is in settlement of the following items

Date Amount

10 Interest on 2nd Mtge. up to date.

Total

If incorrect please return

No receipt necessary

ISAAC CADES

16 S. Conn. Ave.

No. 8734

Atlantic City, N. J. Dec. 26, 1928

Pay to the order of Silverman \$300 00/100

Three Hundred Dollars

Isaac Cades

20

To ATLANTIC CITY NATIONAL BANK

55-139/3 ATLANTIC CITY, N. J.

(Perforated):

P A I D

12 28 28

55-139

(On back):

Pay to the order of the SOUTHWARK NATIONAL BANK for the account of MAX SILBERMAN

30

Pay to the Order of

Federal Reserve Bank of Philadelphia

Prior Endorsements Guaranteed

3-7 DEC. 27, 1928 3-7

SOUTHWARK NATIONAL BANK

Philadelphia, Pa.

3-4 Pay to the Order of 3-4

ANY BANK, BANKER OR TRUST
CO.

Prior Endorsements Guaranteed
Federal Reserve Bank of Philadelphia
Pay to the Order of
ANY BANK, BANKER OR TRUST
CO.

All Prior Endorsements Guaranteed

3-4 DEC 27 1928 3-4

FEDERAL RESERVE BANK
Of Philadelphia, Pa.

10

EXHIBIT D2.

2/20/30 L.

20

Deed, Rose West, et al., to Isaac Cades, dated
September 4, 1924.

EXHIBIT D3.

2/20/30 L.

30

Deed, Isaac Cades, et ux., to Isaac Cades, Inc.,
dated May 15, 1926.

EXHIBIT D5.

2/20/30 L.

THE ATLANTIC SAFE DEPOSIT &
TRUST CO.

ATLANTIC CITY

In account with

Isaac Cades

16 S. Connecticut

10

12-27	C		6,767.71—
		4400	
6/7	Disc.	46.20	4,353.80—

EXHIBIT D6.

2/20/30 L.

20

Name H. Knox

Apt. 16 Ground Cades Court

CADES COURT

14-16 South Connecticut Avenue

Atlantic City, N. J.

Phone Marine 8082-W

I. CADES

Sole Owner, Lessee and Operator of

CADES COURT

30

All rents are payable in advance.

If your rent is not paid when due your room or
apartment will be rented without further notice.

Gas and electric are not included in rental rate.

File No.

Rent, \$..... per week \$40 00/100 per month

Rent, per Season, from

to

Apartment Front Basement
 Furnished with

 Deposit on Gas \$. On Elec. \$.
 On Key \$. On Household Goods \$.

Date Paid 1928	Amount	From	To	Received by	
Mar. 15	40	Mar. 15	Ap. 15	I Cades	
Ap. 16	40	Ap. 15	May 15	I Cades	10
May 15	40	May 15	June 15	I Cades	
June 15	40	June 15	July 15	I Cades	
July 15	40	July 15	Aug. 15	I Cades	
Aug. 17	40	Aug. 15	Sep. 15	I Cades	

It is the aim and intention of the management to serve you completely and satisfy you in every way.

Should you have any complaint to make please do so without hesitation.

Should your room or apartment not suit you, we will be pleased to transfer you to any one of our fifty apartments. 20

Yu are held responsible for all furnishings left in your room or apartment.

We should be glad to show our apartments to your friends.

SOUTH JERSEY TITLE AND FINANCE
 COMPANY

Atlantic City, New Jersey 30

STATEMENT OF SETTLEMENT

Between Isaac Cades, Inc. and
 Herman J. Finn

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

75-140.

10

Between

MAX SILBERMAN,

Complainant,

and

ISAAC CADES, INC.,

*Defendant.*On Bill, &c.
Final Decree.

20

This case came on to be heard at chambers, Atlantic City, on the 20th day of February, 1930, in the presence of Charles M. Deull, solicitor, and C. L. Cole, of counsel with complainant, and John C. Reed, of counsel with defendant, on the pleadings and proofs in open court, and the Court having read and considered the pleadings, having heard and considered the proofs and the argument of respective counsel, and being of the opinion that the complainant is entitled to a decree for the amount claimed in his bill, with interest, that the defense of usury as against the complainant has not been sustained, and that the defendant, nor counter-claimants, are not entitled to any relief on their counter-claim;

30

It is, on said day, on motion of Charles M. Deull, solicitor of complainant, ordered, adjudged and decreed that there is due to said complainant the sum

of ten thousand dollars, with interest from December 27, 1928, with complainant's costs to be taxed, including a counsel fee of two hundred and fifty dollars, which is hereby allowed to said complainant, and that a writ of *feri facias* issue for that purpose out of this court, directed to the Sheriff of the County of Atlantic, commanding him to make sale according to law of the mortgaged premises described in the bill, and that out of the money arising from said sale he pay to the complainant, or his solicitor, his said debt, interest and costs, and that in case more money shall be raised by said sale than shall be sufficient to answer said payment, that such surplus be brought into this court, to abide the further order of this Court, unless otherwise previously disposed of by this Court, and that the sheriff make return, without delay, of his proceedings by virtue of said writ. 10

And it is further ordered, adjudged and decreed that the defendant stands absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree. 20

Respectfully advised,

NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

D-75-140.

10	Between MAX SILBERMAN, <i>Complainant,</i> and ISAAC CADES, INC., ISAAC CADES, individually, and HERMAN J. FINN, <i>Defendants.</i>	} On Bill, etc. Notice of Appeal.
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20 The defendant, Isaac Cades, Inc., and Isaac Cades, individually, hereby appeal from the final decree made in the above-stated cause on the twenty-first day of February, 1930, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all cases.

Dated, February 21, 1930.

JOHN C. REED,
Solicitor of and of Counsel with Isaac Cades, Inc., and Isaac Cades, individually.

30

I conceive there is good cause for appeal in the above-stated cause.

JOHN C. REED,
Of Counsel with Isaac Cades, Inc., and Isaac Cades, individually.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between 10
MAX SILBERMAN,
Complainant-Respondent,
and
ISAAC CADES, INC., ISAAC
CADES, individually,
and HERMAN J. FINN,
Defendants-Appellants.)
On Appeal from
Chancery.
Petition of Appeal.

20

*To the Honorable, the Court of Errors and Appeals,
in the Last Resort in All Causes:*

The petition of Isaac Cades, Inc., and Isaac Cades, individually, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable Robert H. Ingersoll, one of the Vice-Chancellors, bearing date the 21st day of February, 1930, in a cause in said Court of Chancery wherein the said Max Silberman was complainant, and the said Isaac Cades, Inc., Isaac Cades, individually, and Herman J. Finn were defendants, in this respect, to wit, 30

that the said decree orders that said defendants pay unto the complainant the sum of \$10,000, with interest from December 7, 1928, and complainant's cost, when the said decree should have been that defendants pay the sum of \$8500 without interest or cost.

2. Petitioners appeal from the decree of the Chancellor, which decrees as aforesaid, upon the
10 ground that the same is erroneous in that:

a. It denies the defendants the relief prayed for in defendants' answer and counter-claim when it should have granted the defendants the relief prayed for in their answer and counter-claim.

And therefore, petitioners humbly appeal from every part of said decree of the said Chancellor upon the ground that the same is erroneous.

20 3. Petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper and meet.

JOHN C. REED,

Solicitor for and of Counsel with Appellant.

30

[ENDORSED]

Service of a copy of the within petition of appeal is hereby acknowledged this 17th day of March, 1930.

Charles M. Duell,

Solicitor for Complainant-Respondent.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

MAX SILBERMAN,
Complainant-Respondent,

and

ISAAC CADES, INC., ISAAC CADES, individually,
and HERMAN J. FINN,
Defendants-Appellants.

ON BILL, etc.

BRIEF FOR DEFENDANTS-APPELLANTS.

STATEMENT.

This is a bill to foreclose a mortgage on premises situate, lying and being in the City of Atlantic City, County of Atlantic and State of New Jersey, described as follows:

- Beginning in the Westerly line of Connecticut Avenue, one hundred fifty feet Southwardly of the Southerly line of Atlantic Avenue, and extending thence (1) Westwardly parallel with Atlantic Avenue one hundred and seventy-five

feet; thence (2) Southwardly, parallel with Connecticut Avenue, fifty feet; thence (3) Eastwardly, parallel with Atlantic Ave., one hundred and seventy five feet to the westerly line of Connecticut Avenue; thence (4) Northwardly in and along same fifty feet to the place of beginning.

On December 27, 1926, Isaac Cades, Inc., executed to one Herman J. Finn a bond in the sum of ten thousand (\$10,000) dollars, payable at the expiration of two years from the date thereof, with interest at the rate of six per cent per annum payable semi-annually, and to secure payment of said bond executed on the same date a mortgage on the above described premises. Which bond and mortgage were duly recorded.

On the same day and date, the above-mentioned bond and mortgage were assigned by Herman J. Finn to Max Silberman, the complainant in this cause. Said assignment was duly recorded.

On December 27, 1928, the due date thereof, the said bond and mortgage became due and payable, and the payment thereof was by verbal agreement postponed to May 26, 1929. Default was made on the payment of said bond and mortgage.

The defendant, Isaac Cades, Inc., by its answer, admits the execution of said bond and mortgage, but denies that it, as a corporation, is indebted to complainant for the sum of said bond and mortgage, or any other sum, and alleging further that the real parties to the transaction were the complainant, and Isaac Cades.

The answer further alleges that the

“whole amount of principal secured by said bond and mortgage and which then became due

was \$8,500.00 and no more, upon which the mortgagor was and still is entitled to a credit by way of reduction of said amount due the sum of \$180.00 being the amount received by the complainant as interest at the rate of 6% per annum for two years, to wit: from December 27, 1926, to December 26, 1928, on the sum of \$1500.00 agreed to be advanced by complainant and included in the \$10,000 secured by said mortgage, but not, in fact, advanced."

The defendant, Isaac Cades, Inc., also filed a counter-claim, in which it asserted that it was not the beneficial owner of the mortgaged premises, that Isaac Cades was the beneficial owner, that said corporation was formed for the sole purpose of taking title to said land, that the incorporators were Isaac Cades, and his two sons Julius and Elliott, that there was never any money paid to the corporation, that the corporation never paid any money to Isaac Cades for the deed to the land, that said corporation was the legal but not the beneficial owner of the land, that said corporation was formed for the sole and exclusive benefit of Isaac Cades. The counter-claim prayed that:

"The said Isaac Cades may be decreed to be the equitable owner of the mortgaged premises, and this defendant have no beneficial interest therein, and to that end let Isaac Cades and Herman J. Finn be made parties defendants to the suit."

The defendant Isaac Cades filed an answer to the counter-claim of Isaac Cades, Inc., admitting all of the allegations contained in the counter-claim, and filing a counter-claim in his own behalf against the

complainant, in which he sets out in detail the transaction between himself and the complainant, alleging among other things, that said corporation was formed for the purpose of evading the law relating to usurious interest, that a corrupt bargain was entered into by the complainant and defendant, to use said corporation for that purpose, that he received actually the sum of \$8,500.00, instead of \$10,000, as recited in said mortgage, that neither the defendants Isaac Cades, Inc., nor the defendant, Herman J. Finn has or ever had any beneficial estate, title or interest in said mortgaged premises, and praying that said bond and mortgage and the transactions hereinabove set forth be decreed to be usurious, and that an account be taken of the transaction to determine the just balance due complainant on his bond and mortgage.

FACTS.

The defendant, Isaac Cades, sustained and proved all of the allegations contained in his counter-claim against the complainant and thereby under the adjudicated cases in our State was entitled to the relief prayed for therein. The facts disclose that the complainant and the defendant, Isaac Cades, entered into an agreement whereby the complainant would lend to the defendant the sum of \$8,500, upon the defendant executing to him through Isaac Cades, Inc., and Herman J. Finn, who was the agent of both the complainant and defendant, a bond and mortgage for \$10,000. It was proved the corporation of Isaac Cades, Inc., was formed for the purpose of permitting the defendant Isaac Cades to borrow money on bond and mortgage.

The testimony of John B. Cook, a settlement clerk of the South Jersey Title & Finance Co., proves the actual amount of money loaned and by whom it was loaned. S. C., page 22:

“Q. How much was deposited?

A. \$8500.

Q. Do your records show who deposited that money?

A. It was a check of Max Silberman. Just who the check was made to I cannot at this time tell.

Q. Did Herman J. Finn deposit any money in payment of this mortgage loan with you?

A. No check of Herman Finn's was received by the company unless this \$8500 check was made payable to him and endorsed by him to the company.”

It was admitted by the complainant that the check given to make the loan was the check of Max Silberman, made to the order of the South Jersey Title & Finance Company.

It was admitted in the pleadings that the execution of the bond and mortgage from Isaac Cades, Inc., to Herman J. Finn, and the assignment of the bond and mortgage from Herman J. Finn to the complainant took place on the same day.

It was proved that Herman J. Finn neither gave nor did he receive any monies in the transaction, other than his commission.

It was proved that Isaac Cades was the beneficial owner of the mortgaged premises, and that the legal title was in Isaac Cades, Inc., and the purpose for which the corporation was formed was to evade the usury law.

LAW.

The only question of law involved in this cause is made out by the pleadings and the fact proved is whether or not a corporation may be formed and used to promote an illegal scheme or device to evade the law against usury.

The particular Act which the complainant and the defendant, Isaac Cades, sought to evade is an Act against usury found in Vol. 4, Compiled Statutes, page 5704, which reads as follows:

“Contract rate six per cent.—That no person or corporation shall, upon contract, take directly or indirectly, for loan of any money, wares, merchandise, goods and chattels, above the value of six dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum or for longer or shorter time.”

And also Section 2 of said Act, Vol. 4, Compiled Statutes, page 5705, which reads as follows:

“Forfeiture of all interest; deduction from recovery.—That in all cases of suits at law or in equity to enforce any note, bill, bond, mortgage, contract, covenant, conveyance, or assurance, which shall be hereafter made for the payment or delivery of any money, wares, merchandise, goods, or chattels lent, and on which a higher rate of interest shall be reserved or taken than was or is allowed by the law of the place where the contract was made or is to be performed, the amount or value actually lent, without interest or costs of suit, may be recovered, and no more; and if any premium or illegal interest shall have been paid to the

lender; the sum or sums so paid shall be deducted from the amount that may be due as aforesaid, and recovery had for the balance only."

It will be seen that in the original Act relating to usury, a corporation was amenable to the statute. In Pamphlet Laws of 1902, page 459, and found in Compiled Statutes, Vol. 4, page 5706, the Act was amended so that corporations would be exempt from its provisions, which Act, exempting corporations, reads as follows:

"And no corporation shall hereafter plead or set up the defense of usury to any action brought against it to recover damages or enforce a remedy on any obligation executed by said corporation; provided, that this Act shall not apply to any such action which is now pending."

The purpose of this latter Act was to permit corporations which were engaged in the sale and disposal of their bonds and who were in need of capital, to procure said capital. The Act was primarily intended to be used by railroad corporations and public utilities to permit them to raise money by the sale of stocks and bonds in order to carry out their corporate purposes. It was never intended by said Act to permit corporations to be formed for the express purpose of defeating an Act against usury.

It is clear from the facts in this case that Isaac Cades, Inc., was not formed with any view of exercising corporate powers or to promote any general objects for which corporations are generally formed, but the same was organized and formed for the express purpose of permitting an evasion of the Act relating to usury.

It is respectfully submitted that the decree of the Court of Chancery should be reversed.

Respectfully submitted.

JOHN C. REED,
*Attorney for Defendants-
Appellants.*

SUPPLEMENTAL BRIEF FOR DEFENDANTS-
APPELLANTS.

In the case of *Stockton v. Central R. R. Co.*, 50 N. J. Eq., p. 52, it was held that:

“Equity looks at the substance, not merely the outward form.”

And further at page 75 in the same case it was held:

“It is a certain rule,” said Lord Mansfield in *Johnson v. Smith*, 2 Burr. 962, “that a fiction of law shall never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted.”

And at page 76 of the same case, the following was found:

“It must not be thought that Courts are powerless to strip off disguises that are designed to thwart the purposes of the law. The mere suggestion of such a condition is an insult to the intelligence of the judiciary. Whenever such disguises are made apparent they can readily be disrobed. The difficulty is in showing the disguises, not in penetrating them when they appear.

Attorney-General v. The Great Northern Railway Co., *supra*;

Pennsylvania R. R. Co. v. Commonwealth,
7 Atl. Rep. 268;

People v. Chicago Gas Trust Co., 130 Ill.
268;

People v. North River Sugar Refining Co.,
121 N. Y. 582;

State of Ohio, ex rel., Attorney-General v. Standard Oil Co., 30 N. E. Rep. 279.”

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And in the case of *Earle v. American Sugar Refining Co.*, 74 N. J. Eq., p. 761, the case of *Stockton v. Central R. R. Co.*, is cited with approval:

“And now, an appeal is made to a court of equity, which penetrates all disguises of form, and, disregarding the shadow, grasps the substance.” * * * *

* * * * *

“The absence of precedents or novelty in incident presents no obstacle to the exercise of the jurisdiction of a court of equity. It is no objection to the exercise of jurisdiction that, in the ever-changing phases of social relations, a new case is presented and new features of wrong are involved.”

In the case of *Rapoport v. Rapoport Express Co.*, 90 N. J. Eq. p. 519, Vice-Chancellor Lane reiterated the doctrine cited in the above cases to the effect that a court of equity penetrates all disguises of form, and, disregarding the shadow, grasps the substance.

And Chancellor Walker in the case of *Mink v. Wood-Cox*, 92 Eq. 307, reiterated the same doctrine and cited with approval the cases above quoted.

In all of the above cases a creation or creature of the law was sought to be used for the purpose of evading some other law.

It is respectfully submitted that the decree of the Court of Chancery should be reversed.

JOHN C. REED.

67.

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NEW JERSEY
Court of Errors and Appeals

BETWEEN

MAX SILBERMAN,

Complainant-Respondent,

and

ISAAC CADES, INC., ET AL.,

Defendants-Appellants.

On Appeal from
Court of Chancery.

BRIEF FOR RESPONDENT

STATEMENT

This is the usual form of a bill to foreclose a mortgage made by Isaac Cades, Inc., a New Jersey corporation, to Herman J. Finn, and which mortgage was assigned to complainant.

Defendant-appellant filed an answer and counterclaim. The substance of the defense and counterclaim is that the mortgage is usurious and that there was a corrupt arrangement between respondent and Isaac Cades, once the owner of the mortgaged premises, to evade the usury statute by forming a corporation and having it execute the mortgage.

The conclusions announced by the Vice-Chancellor, after proofs and argument, are not printed. The final decree at page 74, which is incomplete, determines that

the defense of usury has not been sustained, and that defendant is not entitled to relief on the counterclaim.

The answer to the petition of appeal is not printed, although it was filed on the 18th day of March, 1930.

ARGUMENT

I

THE DEFENDANT-APPELLANT, A CORPORATION, CANNOT SET UP USURY

The statute, which is familiar to all, forbids a corporation to set up usury.

The counterclaim seeks to sweep aside the statute by averring an agreement between Cades, an individual, and appellant to incorporate Cades and prevent the defense of usury. We quote paragraph four of the counterclaim:

"4. After said conveyance, said Isaac Cades desired to borrow from complainant a sum of money to be secured upon said land, and complainant was willing to make a loan so secured, but only upon condition of receiving a premium or bonus for such loan equal to 15 per cent. of the amount thereof to be secured by mortgage and included in the amount of such mortgage, and thereupon, in order to avoid the operation of the statute of this State against usury and evade the effect of provisions thereof the complainant and said Cades agreed that complainant should lend to said Cades the sum of \$8,500, and that said Cades should pay to complainant for said loan of \$8,500 the sum of \$1,500 by way of premium or bonus for said loan, and should also pay interest on the sum of \$10,000 at the rate of 6 per cent. per annum, said loan, bonus and interest to be secured by bond and mortgage in the sum of \$10,000 on said land and premises, and in order to avoid and preclude the defense of usury in any proceeding that there-

after might be instituted to foreclose the mortgage so to be given, it was agreed between said parties to adopt, and they did adopt, the following plan or device, viz.: to cause defendant corporation to execute to, or in the name of, one Herman J. Finn, a bond conditioned for the payment of the sum of \$10,000 at the expiration of two years from the date thereof, with interest at the rate of 6 per cent. per annum, and procure the said bond and mortgage to be assigned by said Finn to the complainant, who should then pay to said Isaac Cades the sum of \$8,500, the amount of the agreed loan, on the delivery to him of the bond, mortgage and assignment stipulated for. In pursuance of said plan or device, the bond, mortgage and assignment were executed, but no money was paid by Herman J. Finn to defendant upon or at any time after the execution of said bond and mortgage, and no delivery thereof was made to him, nor did he receive any money from the complainant upon, or at any time after executing said assignment of the bond and mortgage. Said bond, mortgage and assignment were respectively delivered to said Isaac Cades, who in turn delivered the same to the complainant, or to his agent, on or about January 26th, 1927, who at the same time received from the complainant, in person or by or through his agent, South Jersey Title and Finance Company, the amount of said loan, to wit, \$8,500."

II

THE PROOFS DO NOT SUSTAIN THE
AGREEMENT AVERRED

Until Isaac Cades was cross-examined the inference was justifiable that the making of the mortgage under foreclosure, which, by the way, is a second mortgage, was contemporaneous with the incorporation of Cades, but, upon cross-examination showed the contrary to

be true, and that, in fact, Cades had incorporated some time before the making of the mortgage in question, and in order to borrow from the Mortgage Guarantee Trust Company of Baltimore, Maryland. At page 47 we have the following:

“Q. You incorporated in April, 1926?

A. Right.

Q. This mortgage was made in December, 1926, is that right?

A. Yes, sir.

Q. What were you doing between April, 1926, and December, 1926, in an effort to get money?

A. I was negotiating it.

Q. Who suggested to you that you should incorporate?

A. Why, the first people that I came to loan this money.

Q. Who was it who suggested that you incorporate?

A. The Mortgage Guarantee Trust Company, Mortgage Company of Baltimore.

Q. Where?

A. Baltimore.

Q. It was at the request of that mortgage company that you incorporated with a view of getting money from the mortgage company, is that correct?

A. The entire amount, yes.

Q. And you got a first mortgage, didn't you?

A. Yes.

Q. For how much?

A. Fifty thousand.

Q. In the name of the corporation?

A. Yes.

Q. So that you really incorporated in April at the suggestion of the Mortgage Company of Baltimore and you got fifty thousand dollars as a result, did you?

A. Yes.”

Then at page 48, line 20:

“Q. Then seeing that you needed more money you negotiated for another mortgage, didn't you?”

And after objection, this is answered at page 49,

“A. Yes.

Q. Who is the first person you saw about getting the money for you?

A. Mr. Finni.

Q. And he got it, didn't he?

A. He agreed to get it for me for a consideration.”

So it will be observed that Mr. Cades volunteered to incorporate himself at the suggestion of the Mortgage Company of Baltimore, to which, as will appear in the case, he applied for a loan of \$60,000, and was granted a loan of \$50,000. This occurred in April, while the mortgage to the respondent was not made until the following December, and there is no proof that Cades or the respondent ever met until after Finn, whom Cades had employed to get an additional loan, had approached the respondent and told him that he had a second mortgage to sell at a discount.

The only proof on the subject of the alleged agreement set up in the counterclaim came from Cades, who, as it appears on cross-examination, admitted the incorporation came as a suggestion from another. The respondent denied the alleged agreement, and we assume that the Vice-Chancellor believed him. However, it is of no importance whether there was such an agreement, because if made it was not made until months after the incorporation.

A reading of the entire testimony should astound any fair mind as to how Cades would have the effrontery to set up the defense and counterclaim which he did.

As appears by the testimony of Mr. Cook, of the South Jersey Title Company, which insured the mortgage in question, there was produced a certified copy

of the resolution of the corporation authorizing the mortgage, and also an affidavit of Cades required in order to insure mechanics' liens.

The testimony of Isaac Cades and his son, in the light of the resolution, affidavit, etc., produced, place them in a sorry position.

The minute book of the corporation was offered and received in evidence, and marked C-5, but no minutes are printed.

Mr. Finn, to whom the mortgage was made and who assigned to respondent, was called as a witness by appellant. It was sought to establish the alleged unlawful agreement by him. We invite the Court's attention to the number of leading questions propounded by counsel to show the utter lack of value of the answers given. On cross-examination, at page 24, he is asked,

"Q. Who suggested the making of this mortgage to you and the assignment by you to Mr. Silberman?"

A. My own suggestion."

And the previous question and answer clearly manifests, we submit, that when Cades requested Finn to negotiate the mortgage loan there was no thought of unlawful agreement touching usury.

The decree should be affirmed.

Respectfully submitted,

CHARLES M. DUELL,
Solicitor for Complainant-Respondent,

C. L. COLE,
Of Counsel.

