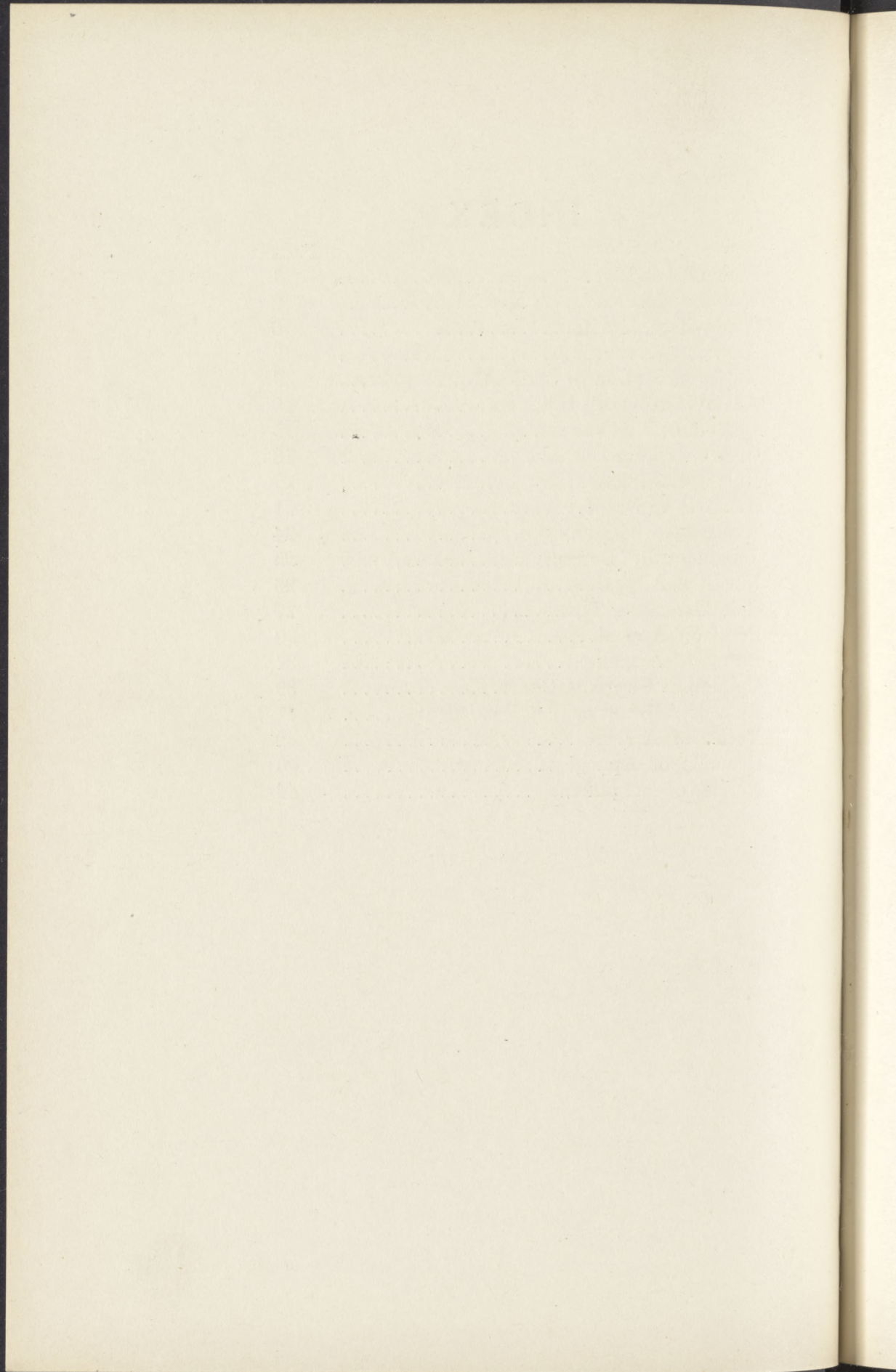


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**SUMMONS.**

The State of New Jersey: Jacob  
Holdman, to Michael J. Tansey:

(SEAL) YOU ARE SUMMONED to answer the  
annexed complaint of Jacob Holdman  
in an action at law in the Essex 10  
County Circuit Court. AND TAKE NOTICE, that  
unless you file your answer to the said complaint  
with the Clerk of said Essex County Circuit  
Court at Newark, within twenty days after serv-  
ice upon you of this writ and the annexed com-  
plaint, the plaintiff may proceed in the suit and  
judgment may be entered against you.

WITNESS, NELSON Y. DUNGAN, Esq., Judge of  
said Essex County Circuit Court at Newark, this  
7th day of December, Nineteen Hundred and 20  
Twenty-eight.

JOHN S. SCOTT,  
Clerk.

LOUIS SPIEGEL,  
Attorney.

To the Within-named Defendant:

TAKE NOTICE, that if the within summons and  
complaint be served upon you personally, and you 30  
intend to make defense, you must file an affidavit  
of merits within ten days from service upon you,  
and must file your answer within twenty days  
from the date of such service, and in default of  
the filing of such affidavit and answer, judgment  
will be entered against you.

LOUIS SPIEGEL,  
Attorney of Plaintiff.

## COMPLAINT.

**Essex County Circuit Court**

10	JACOB HOLDMAN,  <div style="text-align: center;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> MICHAEL J. TANSEY,  <div style="text-align: center;"><i>Defendant.</i></div>	}	<i>Action at Law.  Complaint.</i>
----	---	---	---

Plaintiff, residing in the City of Newark,  
County of Essex and State of New Jersey, says:

20

## FIRST COUNT.

1. He sues for the amount of a promissory note in the sum of one thousand dollars (\$1,000), made by the defendant and endorsed by the plaintiff, a true copy of which is hereto annexed and made part hereof.

2. Plaintiff presented said note for payment at the place where same was payable, but payment was refused.

30

3. Plaintiff still owns said note, no part thereof having been paid.

WHEREFORE, judgment will be claimed on the first count in the sum of one thousand dollars (\$1,000), besides interest and costs of suit.

## SECOND COUNT.

40

1. He sues for the amount of a check in the sum of two hundred fifty dollars (\$250) made by the defendant to the order of the plaintiff, repre-

*Complaint.*

senting money due and owing to plaintiff, a true copy of which is hereto annexed and made part hereof.

2. Said check was duly returned protested, and no part thereof has been paid.

WHEREFORE, judgment will be claimed on the second count in the sum of two hundred fifty dollars (\$250), besides interest and costs of suit. 10

LOUIS SPIEGEL,  
Attorney of Plaintiff.

12/3/28

NOTE

\$1,000.00 Newark, N. J. Oct. 25, 1928 20  
Thirty days after date I promise to pay to the order of Jacob Holdman  
One Thousand and no/100.....Dollars  
At National Newark & Essex Banking Co.  
Newark

Value Received with interest  
MICHAEL J. TANSEY.

Protested Nov. 26, 1928

\$1,000.00  
5.00 Interest 30  
2.00 Protest Fee  
.10 Postage  
.02 Notices

---

\$1,007.12

40

*Complaint.*

CHECK

NATIONAL STATE BANK

Newark, N. J. November 28, 1928 No. 3025

Pay to the order of Jacob Holdman \$250.00

Two Hundred and Fifty and no/100.....Dollars

10

MICHAEL J. TANSEY.

Served the within summons and complaint with ten days' notice endorsed thereon, Dec. 8, 1928, personally, upon Michael J. Tansey, within-named defendant, at his principal place of business, 164 Market street, Newark, N. J.

CONRAD DEUCHLER,

Sheriff.

20

By D. DEMAREST, JR.,  
Sp. Deputy.

I hereby appoint and depute Daniel Demarest, Jr., to serve the within writ.

Witness my hand and seal the 8th day of December, 1928.

CONRAD DEUCHLER,

Sheriff.

30

By ALFRED C. WALKER,  
Under Sheriff.

Sheriff's Fees, \$3.78.

12/7/28

40

*Complaint.*

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

DANIEL DEMAREST, Special Deputy Sheriff of  
 the county aforesaid, being duly sworn, on his  
 oath deposes and says, that on the 8th day of  
 December, 1928, he delivered personally to the  
 said defendant a true copy of the within summons  
 and complaint, with a ten days' notice endorsed  
 thereon. 10

DANIEL DEMAREST, JR.

Subscribed and sworn to this  
 12th day of December, 1928.

HARVEY W. KEOUGH,  
 Notary Public  
 of New Jersey.

My commission expires June 1, 1932. 20

30

40

**AFFIDAVIT OF MERITS.**

Filed December 17, 1928.

## ESSEX COUNTY CIRCUIT COURT.

10 48265

JACOB HOLDMAN,

*Plaintiff,**vs.*

MICHAEL J. TANSEY,

*Defendant.**Action  
at Law.**Affidavit  
of Merits.*STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

20

MICHAEL J. TANSEY, of full age, being duly sworn according to law, on his oath says, he believes he has a just and legal defense to the above action on the merits of the case.

MICHAEL J. TANSEY.

Sworn to and subscribed before me this 17th day of December, 1928.

30

ELLA TANSEY,  
Notary Public  
of New Jersey.

40

**ANSWER.**

Filed December 26, 1928.

## ESSEX COUNTY CIRCUIT COURT.

---

 JACOB HOLDMAN,

*Plaintiff,*
*vs.*

MICHAEL J. TANSEY,

*Defendant.*


---

10

*Action  
at Law.*
*Answer.*

Defendant residing in the City of Newark,  
County of Essex and State of New Jersey, an-  
swering the complaint in the above cause of  
action, says:

20

## ANSWER TO FIRST COUNT.

1. Defendant denies paragraphs one, two and  
three of the first count of the complaint.

## FIRST SEPARATE DEFENSE.

1. Plaintiff charged defendant and defendant  
was compelled to pay a bonus and interest rate  
for the use and loan of said sum of one thou-  
sand dollars (\$1,000), which was usurious and  
illegal under the statute (Revision of 1877 and the  
amendments and supplements thereof).

30

## SECOND SEPARATE DEFENSE.

1. Said sum of one thousand dollars (\$1,000)  
has been paid, and is not due and owing.

40

*Answer.*

ANSWER TO SECOND COUNT.

1. Defendant denies paragraphs one and two of the second count of the complaint.

FIRST SEPARATE DEFENSE.

10 1. Plaintiff charged defendant and defendant was compelled to pay a bonus and interest rate for use and loan of said sum of two hundred fifty dollars (\$250) and other sums, which was usurious and illegal under the statute (Revision of 1877 and the amendments and supplements thereof).

SECOND SEPARATE DEFENSE.

1. Said sum of two hundred fifty dollars (\$250) has been paid, and is not due and owing.

20

MICHAEL J. TANSEY,  
*Attorney Pro Se.*

30

40

**NOTICE OF MOTION.**

Filed January 11, 1929.

**ESSEX COUNTY CIRCUIT COURT.**

<p>JACOB HOLDMAN,</p> <p style="text-align: center;"><i>vs.</i></p> <p>MICHAEL J. TANSEY,</p>	<p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>Defendant.</i></p>	<p><i>Action</i></p> <p><i>at Law.</i></p> <p><i>Notice of</i></p> <p><i>Motion for</i></p> <p><i>Order to</i></p> <p><i>Strike Out</i></p> <p><i>Answer.</i></p>	<p>10</p> <p>20</p> <p>30</p>
---	---	---	-------------------------------

To Michael J. Tansey, Esquire, attorney of defendant, or to whom it may concern:

Dear Sir:

PLEASE TAKE NOTICE that I shall apply to his Honor, William A. Smith, Esquire, Judge of the Essex County Circuit Court, at the Court House of Newark, on the twelfth day of January, 1929, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order to strike out the answer filed by you in the above-stated cause, on the ground that the allegations contained in the same are untrue in fact and sham, and shall support my application by the affidavit of plaintiff hereto attached.

LOUIS SPIEGEL,  
Attorney for Plaintiff.

*Affidavit of Jacob Holdman.*

**Affidavit of Jacob Holdman.**

ESSEX COUNTY CIRCUIT COURT.

10	JACOB HOLDMAN,  <div style="text-align: center;"><i>vs.</i></div> MICHAEL J. TANSEY,	Plaintiff,  Defendant.	} <i>Action at Law. On Application for Summary Judgment. Affidavit.</i>
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STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX. } *ss.*

20 JACOB HOLDMAN, of full age, being duly sworn,  
 on his oath deposes and says:

I am the plaintiff in the above-stated cause.  
 The debt due me from the defendant arises out  
 of the following transaction:

30 On July 26, 1926, I gave defendant a mortgage  
 in the principal sum of seven thousand five hun-  
 dred dollars (\$7,500), which mortgage was re-  
 corded in Book I 58 of Mortgages for said  
 county, on page 268, the mortgage being due and  
 payable on July 26, 1927. In the following year,  
 after said mortgage was called for payment as a  
 result of refinancing, and the defendant being  
 unable to pay the same in full, I thereupon ac-  
 cepted the sum of three thousand five hundred  
 dollars (\$3,500) on account of the principal of  
 the mortgage and renewed the balance of four  
 thousand dollars (\$4,000) for a period of one (1)  
 year; and also subordinated the lien of my mort-  
 40 gage to the lien of an additional loan obtained  
 from the West End Building & Loan Associa-  
 tion. At that date, defendant, Michael J. Tansey,

*Affidavit of Jacob Holdman.*

signed and executed an agreement, a copy of which is annexed to this affidavit and made a part hereof.

Said balance of four thousand dollars (\$4,000) became due on July 26, 1928, and defendant, again being unable to pay this balance due and owing to the plaintiff, requested an extension for a period of three months, which said extension was granted.

10

I was called, on October 25, 1928, to the office of Levy, Fenster & McCloskey, attorneys for the West End Building & Loan Association, who advised that I bring with me my mortgage ready for cancellation. I called at said office with my attorney, presented the mortgage, but after the figures were computed, it was found that the defendant needed one thousand six hundred dollars (\$1,600), in addition to the balance of the moneys held by the building and loan. I thereupon consented to subordinate my lien to the lien of the new building and loan mortgages upon the condition, however, that the entire balance of one thousand six hundred dollars (\$1,600) be paid within thirty (30) days. This was agreed to by the defendant, and on said date of October 25, 1928, a check of six hundred dollars (\$600) was executed, together with a promissory note, payable thirty (30) days after date, for the sum of one thousand dollars (\$1,000). I deposited the note in my bank for collection; and also deposited the check which was drawn on the National State Bank of Newark, New Jersey. This check of six hundred dollars was returned on four (4) occasions marked "insufficient funds."

20

30

I communicated personally and through my attorney, with the defendant, and finally on No-

40

*Affidavit of Jacob Holdman.*

10 vember 22, 1928, he pleaded with me to accept three hundred and fifty dollars (\$350) in cash; a check for two hundred and fifty dollars (\$250), dated November 28, 1928; and also assured me that the note of one thousand dollars (\$1,000) would be paid at its due date, November 25, 1928. I thereupon returned said check for six hundred dollars (\$600).

The check of defendant, in the sum of two hundred and fifty dollars (\$250), was deposited in my bank, but returned marked "insufficient funds." The note of one thousand dollars (\$1,000), due on November 25, 1928, was also returned, likewise marked "insufficient funds."

20 The defendant was never charged any bonus for the use of the loan in said sum of one thousand dollars (\$1,000) nor for the use and loan of the said sum of two hundred and fifty dollars (\$250), both amounts representing the balance due me as a result of defendant's inability to pay the mortgage on October 25, 1928.

I believe that there is no defense to the action.

JACOB HOLDMAN.

30 Sworn and subscribed to before me this 7th day of January, 1929.

LOUIS RELLES,  
Attorney at Law of N. J.

A true copy.

WM. MENGEL,  
A Master in Chancery of  
N. J.

40

*Affidavit of Jacob Holdman.*

This was not a new loan, it was the method used in liquidating a loan on which a bonus was charged, which plaintiff's affidavit does not deny and by plaintiff's own affidavit he states as follows, meaning the \$1,000 and \$250: "both amounts representing the balance due me as a result of defendant's inability to pay the mortgage on 10/25/28."

10

WHEREAS, MICHAEL J. TANSEY, of the City of Newark, County of Essex and State of New Jersey, is the present owner in fee of the premises described in the indenture of mortgage hereinafter recited; and

WHEREAS, the said Michael J. Tansey has been requested by Jacob Holdman to give the following information concerning said bond and mortgage:

20

Now, THEREFORE, the said Michael J. Tansey does hereby declare that the just and full sum of \$4,000 is now due and owing upon the mortgage recorded in the Essex County Register's Office in Book I 58 of Mortgages for said county, on page 268, besides interest thereon at the rate of six per cent., from September 11, 1927; that the said Michael J. Tansey has no charge, claim, demand, plea or set-off upon, for or against the same, in any manner whatsoever.

30

Michael J. Tansey further declares that there are two mortgages upon the premises in the principal sum of \$22,000 each, held by the West End Building & Loan Association of Newark, N. J.

This declaration is made by the said Michael J. Tansey to induce the said Jacob Holdman to extend the due date of the said mortgage until September 9, 1928, the said Michael J. Tansey

40



**DEFENDANT'S AFFIDAVIT.**

Filed January 28, 1929.

ESSEX COUNTY CIRCUIT COURT.

JACOB HOLDMAN,  <div style="text-align: center;"><i>Plaintiff,</i></div> vs.  MICHAEL J. TANSEY,  <div style="text-align: center;"><i>Defendant.</i></div>	}	Action at Law.  Motion to Strike Out Answer.  Defendant's Affidavit.	10
--	---	--	----

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX. } ss. 20

MICHAEL J. TANSEY, being duly sworn according to law, on his oath says, I am the defendant in the above-stated cause. On or about July 26, 1926, I gave plaintiff a mortgage in the principal sum of seventy-five hundred (\$7,500) dollars, the mortgage being duly payable on July 26, 1927, and covering lands on 16th avenue, Irvington, New Jersey. Plaintiff deducted from the principal of said mortgage seven hundred fifty dollars (\$750), and retained same as a bonus of 10%; besides this there were lawyer's fees paid to Louis Spiegel, attorney for plaintiff by this deponent approximating one hundred (\$100), which was an additional charge by plaintiff against the said loan and made a total of eight hundred fifty (\$850) dollars received by plaintiff from defendants as compensation for the loan besides the 6% interest which was regularly collected thereon. 30

*Affidavit of Michael J. Tansey.*

In the following year said mortgage was renewed in the principal sum of four thousand (\$4,000) dollars, three thousand five hundred (\$3,500) having been paid on account of the principal, and from said four thousand (\$4,000) a deduction was made of four hundred (\$400) dollars by said plaintiff and retained by him as a bonus upon said loan for the extension of one year, besides the 6% interest which was regularly due and paid on said mortgage. Lawyer's fees was also paid by this deponent to Louis Spiegel, attorney for said plaintiff on the said transaction in the sum approximating seventy-five (\$75), which was an addition to the deduction of bonus before mentioned and made a total of four hundred seventy-five (\$475) dollars retained by or paid for the use of plaintiff by this deponent upon said transaction.

On July 26, 1928, the West End Building & Loan Association was engaged in continuing the search against the property in question for the purpose of making an additional loan thereon, and said search and proceedings took upward of two months to complete, which necessitated a further extension of the Holdman mortgage to complete the transaction with the West End Building & Loan Association. Upon the completion of this search two thousand four hundred (\$2,400) dollars was paid to said Holdman on account and later three hundred fifty (\$350) dollars was paid leaving a balance of one thousand two hundred fifty (\$1,250) dollars on the transaction and upon this occasion sixty (\$60) dollars was paid by deponent to Louis Spiegel, attorney for Jacob Holdman, for his services rendered in the matter which went to the benefit of said Jacob Holdman, as well as the preceding bonus and

*Affidavit of Michael J. Tansey.*

lawyer's fees paid. This payment added to the former payments of bonuses and lawyer's fees brought the total up to \$1,385, besides the interest charges of 6%, which were regularly paid.

Deponent believes he should be credited on the balance remaining of the aforesaid amount.

MICHAEL J. TANSEY.

10

Sworn to and subscribed before  
me this 16th day of January,  
1929.

ELLA TANSEY,  
Notary Public  
of New Jersey.

Service of the affidavit in the above matter is  
hereby acknowledged this 16th day of January,  
1929.

20

LOUIS SPIEGEL,  
Attorney for Plaintiff.

30

40

**ORDER STRIKING OUT ANSWER.**

Filed January 30, 1929.

ESSEX COUNTY CIRCUIT COURT.

10 JACOB HOLDMAN,

*Plaintiff,**vs.*

MICHAEL J. TANSEY,

*Defendant.**Action  
at Law.**Order  
to Strike  
Out Answer.*

20 It appearing by affidavit filed in the cause that  
the defense made by defendant's answer is sham  
and the defendant after due notice having failed  
to show facts as entitled him to defend,

It is on this 30th day of January, A. D. 1929,  
ORDERED that the answer filed by the defendant be  
struck out.

WM. A. SMITH,  
Judge.

30

40

**RULE FOR JUDGMENT BY DEFAULT.**

Filed January 30, 1929.

**ESSEX COUNTY CIRCUIT COURT.**

48265

JACOB HOLDMAN,

*Plaintiff,*

*vs.*

MICHAEL J. TANSEY,

*Defendant.*

*Action  
at Law.*

*Rule for  
Judgment  
by Default.*

10

The Summons and Complaint in this cause having been duly served upon the defendant personally by the Sheriff of Essex County on December 8, 1928, as appears by the return of said Sheriff and having been returned into the Court and the Plaintiff having filed his complaint within the time required by law for the filing of same and the answer of the defendant having been struck out by order of the Court entered on the 30th day of January, 1929.

20

It is ordered that judgment interlocutory be entered against the defendant Michael J. Tansey and in favor of the Plaintiff Jacob Holdman, and the damages of the plaintiff having been assessed by the Clerk of the Court at the sum of one thousand two hundred seventy dollars and eighty-seven cents (\$1,270.87).

30

It is ORDERED that judgment final be entered against the defendant and in favor of the plaintiff for the sum of one thousand two hundred

40

*Rule for Judgment by Default.*

seventy dollars and eighty-seven cents (\$1,270.87)  
with costs to be taxed.

On motion of

LOUIS SPIEGEL,  
Attorney.

10

Rule entered this 30th day of January, 1929.

20

30

40

## AFFIDAVIT OF PROOF.

Filed January 30, 1929.

## ESSEX COUNTY CIRCUIT COURT.

---

 JACOB HOLDMAN,

*Plaintiff,*
*vs.*

MICHAEL J. TANSEY,

*Defendant.*


---

10

*Action  
at Law.*
*Affidavit of  
Proof.*

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

JACOB HOLDMAN, of full age, being duly sworn on his oath according to law, deposes and says that:

20

1. He is the plaintiff in the above-entitled cause.

2. That he is the holder of a certain promissory note made by the defendant to plaintiff's order a true copy of which is attached hereto, which said note was protested. Plaintiff demanded payment where same was payable but payment was refused.

30

3. There is due on said note the sum of \$1,000.00 with protest fee thereon of \$2.12 together with interest of \$15.00 totalling \$1,017.12.

4. Plaintiff is also the holder of a check in the sum of \$250.00 made by defendant to plaintiff's order representing money due and owing to plaintiff, a true copy of which is hereto attached.

40

*Affidavit of Proof.*

5. Said check was duly returned, protested and no part thereof has been paid. There is now due on said check the sum of \$250.00 besides interest of \$3.75 totalling \$253.75.

10 6. There is due and owing to plaintiff \$1,017.12 on said note, and \$253.75 on said check totalling \$1,270.87 besides costs of suit to be taxed.

Defendant is not entitled to any set-offs, counter-claims or allowances but is justly indebted in said sum of \$1,270.87 besides costs of suit to be taxed.

JACOB HOLDMAN.

20 Sworn and subscribed to before  
me this 30th day of January,  
A. D. 1929.

LOUIS RELLES,  
Attorney at Law of N. J.

## NOTE.

\$1,000.00 Newark, N. J. Oct. 25, 1928.

30 Thirty days after date I promise to pay to  
the order of Jacob Holdman,

One Thousand and no/100 Dollars at National  
Newark and Essex Banking Co.

Newark, Value received with interest

MICHAEL J. TANSEY.

*Affidavit of Proof.*

Protested Nov. 26. 1928.

\$1,000.00

5.00 Interest.

2.00 Protest Fee.

.10 Postage

.02 Notices.

10

---

\$1,007.12

## CHECK.

National State Bank

Newark, N. J. November 28, 1928. No. 3025

Pay to the order of Jacob Holdman \$250.00  
Two Hundred and Fifty and no/100 Dollars.

MICHAEL J. TANSEY,

20

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

I, JOHN H. SCOTT, Clerk of the Circuit Court of Essex County, do hereby certify that I have examined the foregoing statements and calculations and find them correct, do hereby assess the damages of the plaintiff against the defendant at the sum of \$1,270.81 besides costs of suit to be taxed.

30

JOHN H. SCOTT,  
Clerk.

Damages \$1,270.87

Costs 63.23

---

Total \$1,334.10

Filed January 30, 1929.

40

## ASSESSMENT OF DAMAGES.

Filed January 30, 1929.

ESSEX COUNTY CIRCUIT COURT.

10

48265

JACOB HOLDMAN,

*Plaintiff,**vs.*

MICHAEL J. TANSEY,

*Defendant.**Action  
at Law.**Assessment  
on Default  
made by  
Clerk.*

20

I have examined the plaintiff's complaint, and the plaintiff's affidavit, and being satisfied that the foregoing statements and calculations are correct, in pursuance of the statute in such case made and provided do assess the damages of the said plaintiff at \$1,250.00 with protest fees of \$2.12 together with interest in the sum of \$18.75, making a total of \$1,270.87, besides costs of suit to be taxed.

JOHN H. SCOTT,  
Clerk.

30

40

**JUDGMENT BY DEFAULT.**

**ESSEX COUNTY CIRCUIT COURT.**

JACOB HOLDMAN, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 5px 0;"><i>vs.</i></div> MICHAEL J. TANSEY, <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	}	<i>Action at Law.</i>  <i>By Default.</i>	10
---	---	---	----

Judgment entered January 30, 1929.

Damage .....	\$1,270.87
Costs .....	63.23

Total .....	\$1,334.10	20
-------------	------------	----

Louis Spiegel, attorney of plaintiff.

Judgment by default in the above-entitled action was rendered on the Thirtieth day of January, A. D. Nineteen Hundred and Twenty-nine in favor of the plaintiff Jacob Holdman and against the defendant Michael J. Tansey, for the sum of One Thousand Two Hundred Seventy Dollars and Eighty-seven Cents (\$1,270.87) damage and Sixty-three Dollars and Twenty-three Cents and costs of suit.

Judgment entered and signed January 30, 1929.

WILLIAM S. GUMMERE,  
Judge.

JOHN H. SCOTT,  
Clerk.

Recorded in Book 106 Circuit Court Judgments, page 443.

**NOTICE OF APPEAL.**

Filed February 19, 1929.

## ESSEX COUNTY CIRCUIT COURT.

10	48265  JACOB HOLDMAN,  <div style="text-align: center;"><i>vs.</i></div> MICHAEL J. TANSEY,	Plaintiff,   Defendant.	} <i>Action at Law.  On Appeal from Order Striking out Answer and Entering Summary Judgment.</i>
----	--	----------------------------------	---

20 SIR:

PLEASE TAKE NOTICE that the defendant, Michael J. Tansey, hereby appeals from the order striking out defendant's answer and entering summary judgment for the plaintiff in the above matter, to the New Jersey Supreme Court.

MICHAEL J. TANSEY,

Attorney Pro Se.

Dated January 30, 1929.

30 To Louis Spigel, Esq., attorney for plaintiff, or  
Whom It May Concern:

Sat Below:

WILLIAM A. SMITH,  
Judge.

Service of the within notice of Appeal is hereby acknowledged this 13th day of February, 1929.

LOUIS SPIEGEL.

Attorney for Plaintiff.

40

**RULE EXTENDING TIME.**

Filed March 27, 1929.

**ESSEX COUNTY CIRCUIT COURT.**

<p>48265</p> <p>JACOB HOLDMAN,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>MICHAEL J. TANSEY,</p> <p style="text-align: center;"><i>Defendant.</i></p>	}	<p><i>Action at Law.</i></p> <p><i>On Appeal.</i></p> <p><i>Rule.</i></p>	<p>10</p>
--	---	---	-----------

This matter being opened to the Court by Michael J. Tansey, attorney *pro se*, and it being shown to the Court that the above-named defendant has appealed to the New Jersey Supreme Court in the above-entitled matter, and has filed his appeal bond with the National Surety Company, as surety thereon, in the penal sum of \$2,550.00, and the Court being satisfied of the sufficiency of same,

It is thereupon on this 27th day of March, 1929, on motion of Michael J. Tansey, ORDERED that the execution issued in the above matter be stayed and that all the lands, goods and chattels, moneys and effects, rights and credits of said defendant, now levied upon under said execution be and the same are released from the levy, particularly all bank accounts and the time for filing said bond be extended until the 27th day of March, 1929:

AND IT IS FURTHER ORDERED that a true copy of this order be served upon the Sheriff of the County of Essex and any bank or banks or

*Rule Extending Time.*

other custodian of property levied upon under said execution.

WM. A. SMITH,  
Judge.

10 I consent to the filing of the foregoing bond as of within time and to the entry and signing of the above order.

Attorney for Jacob Holdman.

March 26, 1929.

20

30

40

**BOND ON APPEAL.**

Filed March 27, 1929.

## ESSEX COUNTY CIRCUIT COURT.

48265

JACOB HOLDMAN,

*Plaintiff,**vs.*

MICHAEL J. TANSEY,

*Defendant.**Bond on  
Appeal.*

10

KNOW ALL MEN BY THESE PRESENTS, that we Michael J. Tansey, of Newark, New Jersey, as principal, and the National Surety Company, a corporation organized and existing under the laws of the State of New York and authorized to do business in the State of New Jersey, as surety, are held and firmly bound unto Jacob Holdman in the sum of two thousand five hundred fifty and 00/100 (\$2,550.00) dollars, good and lawful money of the United States of America, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

20

30

Sealed with our seals and dated this twenty-sixth day of March, A. D. One thousand nine hundred and Twenty-nine.

Whereas, a judgment was rendered in the Essex County Circuit Court on the 30th day of January, 1929, in a suit therein pending wherein Jacob Holdman, is the plaintiff and Michael J. Tansey, is the defendant for the sum of one thousand two hundred seventy and 87/100 (\$1,-

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*Bond on Appeal.*

270.87) dollars and the defendant Michael J. Tansey, is about to appeal from said judgment of the said Essex County Circuit Court to the New Jersey Supreme Court.

10 The condition of the above obligation is such that if the said Michael J. Tansey, the appellant, in said appeal, shall appear and prosecute the said appeal with effect and also pay and satisfy, if the judgment be affirmed, all the damages and costs adjudged in the former judgment and all costs and damages to be awarded for delay of execution, then this obligation shall be void, otherwise to remain in full force and virtue.

MICHAEL J. TANSEY. (L. S.)  
NATIONAL SURETY COMPANY.

20

(CORP. SEAL.)

By: GEO. A. KAYSER,  
Resident Vice President.

Signed, sealed and delivered in  
the presence of,  
WILLIAM O'GRADY.

Attest:

A. E. REED,  
Resident Assistant Secretary.

30

Countersigned at Newark, N. J.

GEORGE A. KAYSER,  
Agent.

Filed March 27th, 1929.

I hereby approve the within Bond as to security and form this 26th day of March, 1929.

JOHN A. BERNHARD,  
Supreme Court Commissioner.

40

*Bond on Appeal.*

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX,        } ss.  
 CITY OF NEWARK.         }

On this 26th day of March, 1929, before me, the subscriber, a Notary Public of New Jersey duly commissioned and sworn, personally came A. E. Reed, who, being by me duly sworn, on his oath saith: That he is the Resident Assistant Secretary of the National Surety Company of the State of New York, and that he resides in the City of Elizabeth, N. J.; that he knows George A. Kayser, Resident Vice President of the National Surety Company, and he knows, too, the corporate seal of the said Company; that the seal affixed to the foregoing instrument is such corporate seal; and it was affixed by the said Geo. A. Kayser, and the said instrument signed by the said Geo. A. Kayser, Resident Vice President, of said company, attested by deponent as Resident Assistant Secretary by order of the Board of Directors of said company in deponent's presence as the voluntary act and deed of said company; that said company has duly complied with all the requirements of Chapter 134 of the Laws of the State of New Jersey of the year 1902; that the good available assets of the company exceed its liabilities as such liabilities are ascertained in the manner provided in said Chapter; that the National Surety Company is duly incorporated under the laws of the State of New York, and is authorized by the laws of that State and under its charter to become surety on bonds and obligations such as are mentioned in said chapter; and has on deposit with the Superintendent of Insurance of the State of New York, good securities worth at par and at marked value at least two hundred thousand dollars (\$200,000)

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*Bond on Appeal.*

held for the security of its obligations and has a fully paid up, safely invested and unimpaired capital of fifteen million dollars, and said company has appointed the Commissioner of Banking and Insurance of New Jersey and his successors in office as its true and lawful attorney  
 10 in the State of New Jersey, upon whom process of law can be served, and has filed in the office of the Commissioner of Banking and Insurance a written instrument duly signed and sealed, certifying such appointment, together with the residence and office of such attorney within the State of New Jersey; and that the following is a true copy of a By-Law adopted by the Board of Directors of the said National Surety Company on the 6th day of February, 1912 at  
 20 a regular meeting, to wit:

## ARTICLE XII.

Sectional Signatures Required.—All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof, shall be signed by the President, a Vice-President, a Resident Vice-President, or Attorney-in-Fact, and shall have the seal of the Company affixed thereto, duly  
 30 attested by the Secretary, an Assistant Secretary, or Resident Assistant Secretary. All Vice-Presidents and Resident Vice-Presidents shall each have authority to sign such instruments, whether the President be absent or incapacitated, or not, and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated, or not; and the Attorneys-in-Fact shall each have authority in the discretion of such Attorneys-in-Fact, to

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*Bond on Appeal.*

affix to such instruments an impression of the Company's seal, whether the Secretary be absent or incapacitated, or not, or to attach the individual seal of the Attorneys-in-Fact thereto, or to use the scroll of the Attorneys-in-Fact, or a wafer, wax, or other similar adhesive substance affixed thereto, or a seal of paper or other similar substance affixed thereto by mucilage, or other adhesive substance, or use the word "Seal" or the letters "L. S." opposite the signature of such Attorneys-in-Fact, as the case may be. 10

A. E. REED,  
Resident Assistant Secretary.

Sworn and subscribed in the City of Newark, in the County of Essex and State of New Jersey, this 26th day of March, A. D. 1929, before me a Notary Public of New Jersey, duly commissioned and sworn, 20

M. HELEN HENNESSY.

30

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*Bond on Appeal.*

NATIONAL SURETY COMPANY  
OF NEW YORK.

Financial Statement December 31, 1928.

E. A. St. John, President,  
Hubert J. Hewitt, Secretary.

10

E. A. St. John, President.

## ASSETS.

	Stocks and Bonds at Market . . . . .	\$34,284,704.43
	Cash . . . . .	1,954,864.75
	Collateral loans . . . . .	1,037,765.60
	Money loaned on Call . . . . .	3,600,000.00
	Real Estate and Mortgages . . . . .	871,838.79
	Unpaid Premiums . . . . .	4,522,213.41
	Accounts Receivable and accrued Interest . . . . .	2,729,013.85
20		
	Total . . . . .	\$49,000,400.83

## LIABILITIES.

	Reserved for Unearned Premiums.	\$11,875,796.78
	Reserved for Contingent Claims Less Reinsurance . . . . .	5,165,664.88
	Reserved for Losses not yet Re- ported . . . . .	1,018,656.63
30	Reserved for Taxes and Commis- sions not due . . . . .	1,662,869.18
	Reserved for Premiums over 90 days old . . . . .	668,597.42
	Reinsurance in Companies not en- tered for business in New York State . . . . .	152,123.03
	Accounts Payable not due . . . . .	750,023.80
	Dividend declared payable Jan. 2 1929 . . . . .	375,000.00
	Capital Stock . . . . .	15,000,000.00

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*Bond on Appeal.*

Surplus .....	10,000,000.00
Undivided Profits .....	2,331,669.11
	<hr/>
Total .....	\$49,000,400.83

STATE OF NEW YORK, }  
 COUNTY OF NEW YORK. }<sup>ss.</sup>

10

M. E. MURRAY, being duly sworn says that he is Resident Assistant Secretary of the National Surety Company, that said company is a corporation duly organized existing and engaged in business as a surety by virtue of the Laws of the State of New York and has duly complied with all the requirements of the laws of said State and with all of the laws of the State of New Jersey applicable to said company, and is duly qualified to act as surety under such laws; that said company has also complied with and is duly qualified to act as surety under the Act of August 13, 1894, entitled "An Act Relative to Recognizances, Stipulations, Bonds and Undertakings and to allow certain Corporations to be Accepted as Surety Thereon, as amended by the Act of Congress of March 23, 1910." The foregoing is a full, true and correct statement of the financial condition of said company on the 31st day of December, 1928.

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30

M. E. MURRAY,  
 Resident Assistant Secretary.

40

*Bond on Appeal.*

Sworn to before me this 29th  
day of January, 1929.

M. M. MILLER,  
Notary Public for Kings Co., No. 16.

10. Certificate filed in N. Y. Co., No. 18; Bronx Co.  
Clk's. 7 Queens Co. No. 84, Richmond &  
Westchester Counties King's County Reg's.  
No. 117; N. Y. Co. Reg. Office, 117; N. Y.  
County Reg's. No. 0-75; Bronx Co. Reg.  
Of. No. 3006. My commission expires March  
30, 1930,

M. M. MILLER.

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## NOTICE OF ARGUMENT.

## NEW JERSEY SUPREME COURT.

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 JACOB HOLDMAN,

*Plaintiff-Appellee,*
*vs.*

MICHAEL J. TANSEY,

*Defendant-Appellant.*


---

*Action  
at Law.*

10

*Notice of  
Argument.*

To Louis Spiegel, Esq., attorney for plaintiff-appellee, or Whom It May Concern:

SIR:

TAKE NOTICE, that the argument of the issue joined in this cause will be moved before said Court on the first Tuesday of May, 1929, at Trenton, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

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Dated, April 20, 1929.

MICHAEL J. TANSEY,  
Attorney for Appellant, *Pro Se.*

Service of the within notice of argument is hereby acknowledged this 22nd day of April, 1929.

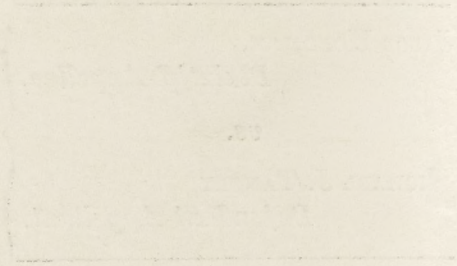
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LOUIS SPIEGEL,  
Attorney for Plaintiff-Appellee.

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**OPINION OF SUPREME COURT.**

Filed January 14, 1930.

NEW JERSEY SUPREME COURT.

No. 74, May Term, 1929.

10

JACOB HOLDMAN,

*vs.*

MICHAEL J. TANSEY.

Appeal from Essex Circuit Court.

Argued before Gummere, Chief Justice, and  
Justices Kalisch and Campbell.

20

For the appellant, Michael J. Tansey, *Pro Se.*

For the respondent, Louis Spiegel.

PER CURIAM:

The plaintiff brought suit to recover the amount claimed to be due to him from the defendant upon a promissory note for \$1,000, dated October 25, 1928, and payable thirty days after date, and also upon a check for \$250, dated upon the same day. Both of these instruments were signed by the defendant and were payable to the plaintiff. The defendant filed an answer stating, with relation to the note, that "Plaintiff charged defendant and defendant was compelled to pay a bonus and interest rate for the use and loan of said sum of \$1,000, which was usurious and illegal." He also set up the same defense and in the same language as to the check given by him to the plaintiff. Plaintiff thereupon moved to strike out this answer, and the Court, after hearing argu-

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*Opinion of Supreme Court.*

ment on the motion, directed the answer to be stricken out as sham, and that judgment be entered for the plaintiff for the full amount of his claim. The defendant has appealed from the judgment entered in accordance with this direction.

- 10 In our opinion the action of the Court in striking out the answer in this case was proper. It is entirely settled that in setting up usury as a defense in an action at law the defendant must set out the particular facts and circumstances of the supposed usurious agreement, so that the Court may see that the agreement was in violation of the statute. *Taylor v. Morris*, 22 N. J. Eq. 611; *Crane v. Homeopathic Mutual Life Insurance Company*, 27 N. J. Eq. 484. The
- 20 allegations of the present answer do not, in the remotest way, suggest the facts or the circumstances intended to be proved, and the plaintiff is in no way apprised by the answer of the facts necessary to be met by him in resisting the defense.

For the reason indicated the judgment under review will be affirmed.

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**RULE OF AFFIRMANCE AND REMITTITUR.**

NEW JERSEY SUPREME COURT.

JACOB HOLDMAN,

*Plaintiff-Appellee,*

*vs.*

MICHAEL J. TANSEY,

*Defendant-Appellant.*

*On Appeal.*

*Rule of  
Affirmance  
and  
Remittitur.*

10

This cause having been duly argued before our Supreme Court, at the May Term, 1929, and the Court having considered the same and finding no errors in the judgment of the Court below,

20

It is ORDERED AND ADJUDGED that the judgment of the Court below be affirmed, with costs, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered January 31, 1930.

On Motion of

LOUIS SPIEGEL.

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**NOTICE OF APPEAL.**

Filed February 3, 1930.

## NEW JERSEY SUPREME COURT.

10	JACOB HOLDMAN,  <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> MICHAEL J. TANSEY,  <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Appeal.</i>  <i>Notice</i> <i>of Appeal.</i>
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*To Louis Spiegel, Esq., attorney for plaintiff:*

20 TAKE NOTICE, that the defendant hereby appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause by the New Jersey Supreme Court, affirming the judgment of the Essex County Circuit Court.

Dated January 18, 1930.

MICHAEL J. TANSEY,  
Attorney *Pro Se.*

30 Service of a true copy of the within notice is hereby acknowledged this 23rd day of January, 1930.

LOUIS SPIEGEL,  
Attorney for Plaintiff.

**GROUNDS OF APPEAL.**

Filed March 18, 1930.

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

<p>JACOB HOLDMAN, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>MICHAEL J. TANSEY, <i>Defendant-Appellant.</i></p>	}	<p>10</p> <p><i>On Appeal.</i></p> <p><i>Grounds</i></p> <p><i>of Appeal.</i></p>
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*To Louis Spiegel, Esq., attorney for plaintiff-appellee:*

20

SIR:

PLEASE TAKE NOTICE that the following are the grounds set forth by the defendant-appellant, as the grounds of appeal in the above-entitled cause:

1. Because the Supreme Court erred in affirming the judgment of the Circuit Court of Essex County, striking out the answer of the defendant.

Dated March 15, 1930.

MICHAEL J. TANSEY,  
*Attorney Pro Se.*

30

Service of a true copy of within grounds of appeal is hereby acknowledged as of time this 18th day of March, 1930.

LOUIS SPIEGEL,  
*Attorney for Plaintiff-Appellee.*

40

**NOTICE OF ARGUMENT.**

Filed April 30, 1930.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10	<p style="margin: 0;">JACOB HOLDMAN, <i>Plaintiff-Appellee,</i></p> <p style="margin: 0; text-align: center;"><i>vs.</i></p> <p style="margin: 0;">MICHAEL J. TANSEY, <i>Defendant-Appellant.</i></p>	<p style="margin: 0;">} <i>On Appeal.</i></p> <p style="margin: 0;">} <i>Notice of</i></p> <p style="margin: 0;">} <i>Argument.</i></p>
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SIR:

20 TAKE NOTICE, that the argument of the issue joined in this cause will be moved before the New Jersey Court of Errors and Appeals on the third Tuesday of May, 1930, at Trenton, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated April 22, 1930.

MICHAEL J. TANSEY,  
Attorney for Defendant-Appellant *Pro Se.*

30 To: Louis Spiegel, Esq.,  
Attorney for Plaintiff-Appellee,  
Or Whom It May Concern.

Sat below: Gummere, Chief Justice, and Justices Kalisch and Campbell.

Service of a true copy of the within notice of argument is hereby acknowledged by me this 25th day of April, 1930.

40 LOUIS SPIEGEL,  
Attorney for Plaintiff-Appellee.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

NEW JERSEY COURT OF ERRORS AND APPEALS

JACOB HOLDMAN, <i>Plaintiff-Appellee,</i>	}	<i>On Appeal.</i>
<i>vs.</i>		
MICHAEL J. TANSEY, <i>Defendant-Appellant.</i>		

**SPECIFICATION OF POINTS.**

On or about July 26, 1926, Michael J. Tansey, gave to Jacob Holdman, a mortgage in the principal sum of Seventy-five Hundred (\$7500.00) Dollars, the mortgage was due and payable on July 26, 1927, and covered lands on 16th avenue, Irvington, N. J., owned by Michael J. Tansey.

Jacob Holdman deducted from the principal of said mortgage Seven Hundred Fifty Dollars (\$750.00) and retained same as a bonus of ten per cent, besides a lawyer's fee, which was paid to Louis Spiegel, the attorney for Jacob Holdman, by Michael J. Tansey, approximating One Hundred (\$100.00) Dollars, which was an additional charge by said Jacob Holdman against the said loan and made a total of Eight Hundred Fifty (\$850.00) Dollars, received by Jacob Holdman from Michael J. Tansey, as compensation for the loan besides the six per cent interest, which was regularly collected thereon.

In the following year the said mortgage was renewed in the principal sum of Four Thousand Dollars (\$4,000.00); Three Thousand Five Hundred Dollars (\$3,500.00) was paid on account of the principal. From said Four Thousand Dollars (\$4,000.00), a deduction was made of Four

Hundred (\$400.00) Dollars by Jacob Holdman and retained by him as a bonus upon the said loan for the extension of one year besides the six per cent interest, which was regularly due and paid on said mortgage. Attorney's fees were paid by Michael J. Tansey to Louis Spiegel, the attorney for Jacob Holdman, in the sum of Seventy-five (\$75.00) Dollars, which was an addition to the deduction of bonus before mentioned and made a total of Four Hundred Seventy-five (\$475.00) Dollars retained by or paid for the use of Jacob Holdman by Michael J. Tansey, upon said transaction.

On July 26, 1928, the West End Building and Loan Association was engaged in continuing the search against the property in question for the purpose of making an additional loan thereon, and said search and proceedings took upward of two months to complete, which necessitated a further extension of the Holdman mortgage to complete the transaction with the West End Building and Loan Association. Upon the completion of this search Two Thousand Four Hundred (\$2,400.00) Dollars was paid to said Holdman on account and later Three Hundred Fifty (\$350.00) Dollars was paid, leaving a balance of One Thousand Two Hundred Fifty (\$1,250.00) Dollars on the transaction and upon this occasion Sixty (\$60.00) Dollars was paid by Michael J. Tansey to Louis Spiegel, attorney for Jacob Holdman, for his services rendered in the matter and which went to the benefit of said Jacob Holdman, as well as the preceding bonus and lawyer's fees paid. This payment added to the former payments of bonuses and lawyer's fees brought the total up to \$1,385.00 besides the interest charges of six per cent, which were regularly paid. Michael J. Tansey therefore should

The Answer which set up usury as a defense was not sham nor frivolous, it was a sufficient statement since the word "usury" is understood to mean "an unconscionable or exorbitant rate of interest; contracting or reserving something in excess of the amount allowed by law for the loan or forbearance of money."

Grossman vs. Calonia Land & Improvement Co.  
104 Atl. 740 Err. & Apps.  
39 Cyc. 880 at 1084, Note 80

It sufficiently appeared from affidavits filed that the defendant was entitled to defend.

Eisele & King vs. Raphael  
90 L. 219 - 221

Fidelity &c. Co. vs. Wilkes Barre &c. Co.  
98 L. 507.

If we assume that the defense stated in the Answer was not in accordance with legal requirements as to pleading usury, nevertheless, it did disclose a defense available to reduce plaintiff's claim, if properly pleaded.

The Answer stricken out was neither frivolous nor sham.

Fidelity &c. Co. vs. Wilkes Barre &c. Co.  
98 L. 507 at 510.

Boynton vs. Evans.  
101 L. 120.

The answer which set out the facts as a defense was not  
... it was a sufficient statement since the word  
... is understood to mean "an unresponsible conduct"  
... of interest; contracting or retaining something in  
... of the amount allowed by law for the loan or borrow-  
... of money."

Crossman vs. Ontario Land & Improvement Co.  
104 Ill. 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

It is further stated that the defendant was entitled to defend.

Essels & King vs. Hancock  
90 Ill. 212 - 231

Wright vs. Co. vs. White & Sons  
88 Ill. 307

It was stated that the defense stated in the answer was  
... in accordance with legal requirements as to pleading  
... nevertheless, it did disclose a defense available to

Wright vs. Co. vs. White & Sons  
88 Ill. 307

Boyd vs. ...  
101 Ill. 120

have been credited on the balance remaining due to Jacob Holdman of the aforesaid amount.

### ARGUMENT.

#### Point One.

Defendant's defense of usury was sufficient and should not have been struck out as sham, as the proofs by the affidavits of both parties showed.

*Lowenthal v. Bauer*, 75 Eq. 286;

*Marsh v. Vanness*, 75 Eq. 606;

*Heintze v. Taylor*, 57 L. 239;

*Weitz v. Quigley*, 88 L. 617;

*Kobrin v. Hull*, 96 Eq. 41, aff'd 97 Eq. 546.

#### Point Two.

The whole transaction was one matter, because the mortgage originally given is still held by Holdman and has never been cancelled, and usurious rates were collected, therefore the defense of usury to the balance was sufficient, and the answer should not have been struck out.

#### Point Three.

Defendant should have been allowed to amend his answer setting up the defense of usury throughout the entire transaction, as the affidavit of defendant clearly showed usury.

MICHAEL J. TANSEY,

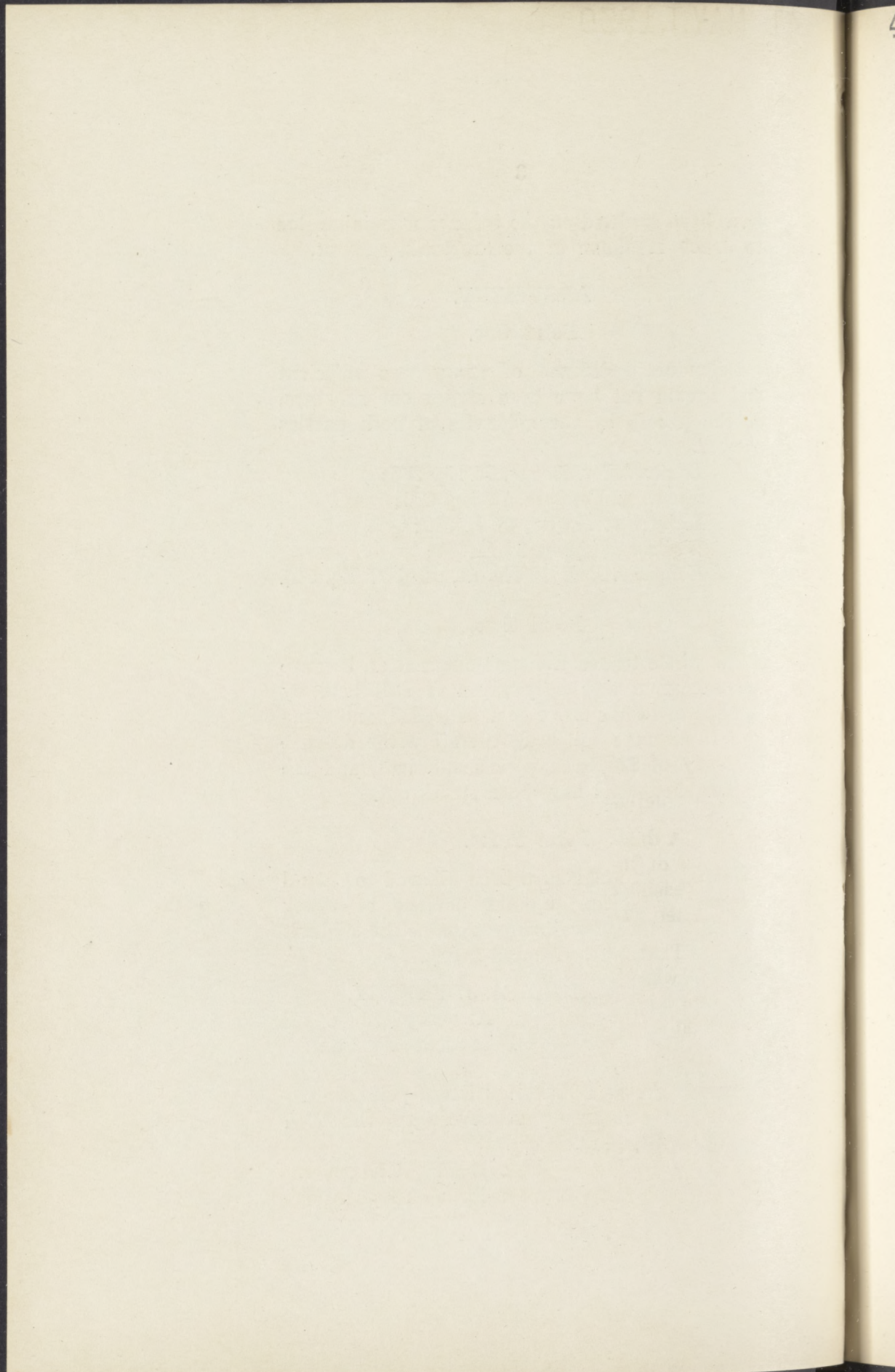
Attorney *pro se*.

Defendant-Appellant.

Service of copy of specification of points in the above matter is hereby acknowledged, this 27th day of April, 1929.

LOUIS SPIEGEL,

Attorney for Plaintiff-Appellee.



Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

JACOB HOLDMAN,  
*Plaintiff-Appellee,*

*vs.*

MICHAEL J. TANSEY,  
*Defendant-Appellant.*

*On Appeal  
from Order  
of Supreme  
Court Affirm-  
ing Judgment  
of the Circuit  
Court of  
Essex  
County.*

### BRIEF OF PLAINTIFF-APPELLEE.

#### Statement of Facts.

This suit was brought in the Essex County Circuit Court to recover \$1,250.00 on two negotiable instruments made by the defendant to the order of the plaintiff; one, a promissory note in the sum of \$1,000.00, and the other, a check in the sum of \$250.00.

Three defenses were interposed:

(a) A denial that the defendant had executed the note or the check, that said instruments had been presented for payment and that they were still owned by the plaintiff.

(b) That plaintiff charged defendant and defendant was compelled to pay a bonus and interest rate for the use and loan of said sums of \$1,250.00, which was usurious and illegal under the statute.

(c) Said sum of \$1,250.00 had been paid and were not due and owing.

The plaintiff moved to strike out the answer on the ground that it was sham, and supported the motion by his affidavit in which he presented

a complete history of the entire transaction. The defendant filed answering affidavits, and after hearing the argument, the court ordered the answer struck out as sham. Summary judgment was thereupon entered by the plaintiff.

### **BRIEF OF THE ARGUMENT.**

1. The variance between the answer and the affidavits clearly show them to be sham and untrue.

The principal and most convincing argument which the plaintiff-appellee can make, is that a careful and deliberate reading of the State of the Case will disclose the wide variance between the answer and the affidavit filed by the defendant.

It is fundamental that at a hearing of a motion to strike out an answer as sham, the only question before the court is whether the answer is sham in relation to the complaint as filed. It is on this record only, that the court is called upon to pass summary judgment. Every portion of the answer is subject to the scrutiny of the court upon such an application. The denial, as well as the affirmative defenses, will be examined by the court in the light of all the facts presented by the parties in the complaint, answer and affidavits. The court is given the power to penetrate through the screen of the pleadings, into the facts by which they are supported, in order to determine whether an issue is presented fairly susceptible of opposite conclusions.

The affidavit of the defendant admits that there was a balance of \$1,250.00 due on the transaction, for he says that, "On July 26, 1928, West End Building & Loan Association was engaged in continuing the search against the property in ques-

tion for the purpose of making an additional loan thereon; and said search and proceedings, took upward of two months to complete, which necessitated the further extension of the Holdman mortgage to complete the transaction with the West End Building & Loan Association. Upon the completion of the search, \$2,400.00 was paid to Holdman on account, and later \$350.00, leaving a balance of \$1,250.00 on the transaction, and upon this occasion \$60.00 was paid by deponent to Louis Spiegel, attorney for Jacob Holdman, etc., etc.”

The plaintiff's affidavit practically coincides with that of the defendant, for it says, “that on July 26, 1928, a balance of \$4,000.00 was due on a bond and mortgage, and defendant, again being unable to pay this balance due and owing to the plaintiff, requested an extension for a period of three months, which said extension was granted.” He further says that on October 25, 1928, he was called to the office of Levy, Fenster & McCloskey, attorneys for the West End Building & Loan Association, who advised him to bring his mortgage ready for cancellation. He went there prepared to deliver the cancelled mortgage upon the receipt of the sum of \$4,000.00 plus interest as payment in full of the mortgage mentioned. He says, “I called at said office with my attorney, and presented the mortgage, but after the figures were computed, it was found that the defendant needed \$1,600.00 in addition to the balance of the monies held by the Building & Loan Association. I thereupon consented to subordinate my lien to the lien of the new Building & Loan mortgages upon the condition, however, that the entire balance of \$1,600.00 be paid within thirty days. This was agreed to by the defendant, and on said date of October 25, 1928, a

check of \$600 was executed, together with a promissory note, payable thirty days after date, for the sum of \$1,000.00. I deposited the note in my bank for collection; and also deposited the check which was drawn on the National State Bank of Newark, New Jersey. This check of \$600.00 was returned on four occasions marked "insufficient funds." Subsequently, on November 22, 1928, the defendant paid \$350.00 in cash on account of the check and delivered a new check of \$250.00 dated November 28, 1928, and assured the plaintiff that the note of \$1,000.00 would be paid on its due date, November 25, 1928. Both instruments were returned to the plaintiff for insufficient funds."

A statement signed by the defendant is attached to and made part of the plaintiff's affidavit, and states specifically: "That the said Michael J. Tansey has no charge, claim, demand, plea or set-off, upon, for or against the same, in any manner whatsoever."

In *Coykendall v. Robinson*, 39 N. J. L. 98, Justice Syckle says,

"That no reason can be assigned why the defendant should be permitted to shelter himself from the power of the court to strike out a false plea, by taking refuge under the general issue."

He further states,

"that the order of the Judge which is brought up in this case, declares that the plea stricken out is a sham plea. The finding of the Judge must be assumed to be true until the contrary appears, and therefore no error appears in striking it from the record."

The identical situation prevails in the case at bar. The court decided, after considering the facts as presented by the complaint, answer and

affidavits, that the defendant's plea was sham, and the contrary must appear in order to reverse that decision.

Rule 80 of the Supreme Court declares that a frivolous or sham plea may be stricken out upon proper affidavit in support of a motion, unless the defendant, by affidavit or other proof, shall show such facts as may be deemed by the Judge hearing the motion, sufficient to entitle him to defend. Under this rule, the finding of the Judge must be taken as true until the contrary appears, and this is so when an appeal is taken from such an order as permitted by Section 15 of the Practise Act of 1912. *Eisele & King v. Raphael*, 90 N. J. L. 223.

2. In setting up a defense of usury, the defendant, must, in his answer, set out the particular facts and circumstances of the supposed usurious agreement, that the court may see that the agreement was in violation of the statute.

The defendant avers that he was compelled to pay a bonus and interest rate for the use and loan of said sum of \$1,250.00, which was usurious and illegal under the statute. The affidavit, however, states that the bonus had been charged for the use and loan of \$7,500.00 and \$4,000.00, respectively.

In the case of *Marsh v. Van Ness*, 75 N. J. Eq. 606, Vice-Chancellor Leaming says,

“As to the defense of usury, the answer of the mortgagor contains an allegation denying that the complainant is entitled to interest on the mortgage for the reason that the said loan is tainted with usury by the said mortgagee demanding and receiving from this defendant a sum of money as a bonus for the making of the said loan, and

also by receiving money in excess of the legal rate of interest allowed by the statutes of the State of New Jersey on the actual sum of money loaned. The answer of the other three defendants set out the defense of usury in substantially the same words and without any particulars of the alleged agreement. In order to be available as a defense at final hearing in equity, the terms of the usurious contract must be precisely and correctly set out, the quantum of the usurious interest must be specified, and the proof must correspond with the allegations."

In the case at bar, the court held that the proof submitted by the defendant in his affidavits did not correspond with the allegations in the answer.

Vice-Chancellor Leaming further stated,

"This is a case where the complainant is entitled to a strict enforcement of the rules of pleading this defense."

In the case most frequently quoted on the subject of pleading usury as a defense, *Taylor v. Morris*, 22 N. J. Eq. 606, the Court of Errors and Appeals, speaking by Mr. Justice Depue, held

"That in setting up a defense of usury in Chancery, the defendant must, in his answer, as in a plea of usury in an action at law, set out the particular facts and circumstances of the supposed usurious agreement that the court may see that the agreement was in violation of the statute."

Chief Justice Beasley, speaking for the Court of Errors and Appeals in the case of *Crane v. Homeopathic Life Insurance Co.*, 27 N. J. Eq. 484, said,

"In this case I have not found it necessary to consider the merits of the matter in controversy. The answer is radically defective, so that the defense which is usury, cannot be presented to the court under it."

In that case, usury was pleaded in general terms instead of specifically, as pointed out by the Chief Justice.

The cases of *Kane v. Hibernia Life Insurance Co.*, 10 Vroom 706, and *Kase v. Bennett*, 54 N. J. Eq. 97, also cite with approval, the doctrines expressed in *Taylor v. Morris*.

**3. No application was made by the defendant for leave to amend his answer.**

The defendant in his brief, says that "Defendant should have been allowed to amend his answer, setting up the defense of usury throughout the entire transaction, as the affidavit of defendant clearly showed usury." A sufficient answer to this argument is that the State of the Case does not disclose any application to amend as having been made by the defendant.

Usury as a defense in an action at law, must be timely and well pleaded. The defendant had ample time in which to file additional pleas, but apparently did not avail himself of the opportunity. The defendant is a lawyer, practising before the Bar of this State for the past thirty years, and is fully cognizant of the rules of pleading.

The motion to strike out the answer of the defendant as sham, was properly granted, for it was clearly established, not only by the affidavit of the plaintiff, but also by the defendant's own affidavit, that the answer was untrue. It was on a deliberate reading of the complaint and affidavits that the court based its decision when it dismissed the answer.

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