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Order to Show Cause.

ORDER TO SHOW CAUSE.

Filed November 3, 1922.

Upon reading and filing the verified petition of Charles Karsh, chattel mortgagee:

It is, on this second day of November, 1922, on motion of Harry Green, solicitor for and of counsel with Charles Karsh, mortgagee, ORDERED, that Russell Fleming, Receiver herein, show cause before this Court, at the Chancery Chambers, Prudential Building, Newark, New Jersey, on the eighth day of November instant, at ten o'clock in the forenoon, or as soon as counsel can be heard, why an order should not be made to pay the said sum of \$2,500.00, with interest at six per cent., from July 18, 1922, to the said Charles Karsh, or his solicitor, and for such other and further relief as the Court may deem proper. 10

And it is further ORDERED, that a copy of this order and petition, certified to be a true copy by the solicitor for Charles Karsh, be served upon the Receiver herein, within one day from the date hereof. 20

EDWIN ROBERT WALKER,

C.

Respectfully advised,

JOHN H. BACKES,
V.-C.

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Petition.

**PETITION BY CHARLES KARSH FOR PAYMENT OF
MONEYS DEPOSITED IN COURT, SUBJECT
TO LIEN OF CHATTEL MORTGAGE.**

Filed November 3, 1922.

10 *To the Hon. Edwin Robert Walker, Chancellor of the
State of New Jersey:*

The petition of Charles Karsh, of the City, County and State of New York, respectfully shows that:

1. The petitioner is a mortgagee and holder of a chattel mortgage for \$2,500.00 made by the defendant corporation to him, dated July 18, 1922, and recorded in the Register's Office of Essex County in Book 412 of Chattel Mortgages, pages 421-23, covering all the goods and chattels of defendant corporation at 161-167 Ogden
20 street, Newark, New Jersey.

2. No payments have been made on account of said chattel mortgage, and the whole amount of principal, \$2,500.00, with interest thereon from July 18, 1922, is now due and owing thereon.

3. Petitioner filed a notice and proof of said chattel mortgage and the amount due thereon, with Russell Fleming, Receiver herein, and consented to the sale of said goods and chattels by the Receiver, free and clear of the
30 lien of said chattel mortgage, the moneys realized from said sale at public auction to be deposited in this Court, subject to the lien of this chattel mortgage.

4. On October 27, 1922, the Receiver sold said goods and chattels covered by the chattel mortgage at public auction.

5. On October 31, 1922, the Court made an order confirming the sale, and ordered the Receiver to pay the aforesaid sum of \$2,500.00, with interest at six per cent. from July 18, 1922, into Court, there to remain subject
40 to the same liens and equities of all parties and interest

Petition.

as was the property before sale, to be disposed as the Court shall direct.

Your petitioner therefore prays, that an order be made directing the Receiver to show cause at a time and place therein fixed, why the said sum of \$2,500.00, with interest, should not be paid to the petitioner, and for such other and further relief as may be just and proper in the premises. 10

Dated November 1, 1922.

HARRY GREEN,
Solicitor for and of Counsel with
Charles Karsh, Mortgagee.

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

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Joseph G. Coney, of full age, being duly sworn according to law, on his oath deposes and says, that:

1. I am the agent for Charles Karsh, the petitioner named in the foregoing petition, and I am authorized to make this affidavit for him.

2. I have read the same and know the contents thereof.

3. The facts and statements therein contained are true, except as to matters and things therein stated to be on information and belief, and as to those matters, I believe them to be true. 30

JOSEPH G. CONEY.

Sworn and subscribed to before me
this first day of November, 1922.

HARRY GREEN,
Master of Chancery of N. J.

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*Stipulation of Facts.***STIPULATION OF FACTS.**

Filed November 20, 1922.

10 It is hereby stipulated and agreed, by and between Charles Karsh, mortgagee, and Russell Fleming, Receiver herein, that the following shall be taken as a statement of the facts in the above matter:

1. Chattel mortgage made by defendant corporation to Charles Karsh, dated July 18, 1922, for the sum of \$2,500.00, received in the Register's Office of the County of Essex, New Jersey, on July 19, 1922, and recorded in Book 412 of Chattel Mortgages, pp. 421-423, and 10 notes given thereunder, shall be received in evidence, and marked exhibits.

20 2. Affidavit made by Joseph Ovsiovitch, complainant herein, shall be received in evidence and marked exhibit.

3. Defendant corporation received the sum of \$2,000.00 from said Charles Karsh, mortgagee, as set forth in the affidavit annexed to the mortgage.

4. Said mortgagee paid all expenses incident to the making of the said loan of \$2,000.00, including brokerage, attorney's fees, etc.

5. No payments have been made on account of said chattel mortgage and notes.

30 Under these facts the question at issue is:

Is the agreement on the part of defendant corporation to pay the said mortgagee the sum of \$2,500.00, when in fact it received \$2,000.00, usurious under the provisions of an act entitled, "An Act relating to usury," P. L. 1902, p. 459, 4 C. S. 5706?

Dated November 6, 1922.

HARRY GREEN,
Attorney for Charles Karsh, Mortgagee.

RUSSELL FLEMING,
Receiver herein, pro. se.

*Opinion of Vice-Chancellor.***OPINION.**

Filed November 16, 1922.

On motion for payment of moneys.

For the motion, Mr. Harry Green.

Contra, Mr. Russell Fleming.

10

BACKES, V.-C.:

Shortly before the defendant corporation was declared insolvent it borrowed from Charles Karsh \$2,000, and gave him its promissory notes aggregating \$2,500, with interest at 6%, and secured the notes by a chattel mortgage on its machinery, tools of trade, &c. The receiver sold the chattels free and clear of the mortgage encumbrance and Karsh now petitions to be paid the amount of the notes out of the proceeds. That the notes and mortgage were given on a usurious bargain is admitted, but Karsh claims that usury cannot be set up in defense by the receiver because of section 7 of the Usury Act (C. S. 5706), which provides that:

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“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.”

It has been held that this statute does not apply to transactions of a private nature, such as is here presented. Mr. Justice Garrison, in *Mazarin v. Hudson County Real Estate & Building Co.*, 80 N. J. L. 35, said that “In view of the uniform Legislative policy of the State in the matter of usury, the words ‘obligation executed’ by a corporation refers to corporate obligations in the sense of bonds, mortgages, debentures and the like that go on the market and into the hands of the public.” And Vice-Chancellor Foster entertained and expressed the same view in a case to foreclose a mortgage given to secure in part, notes tainted with usury; *Seacoast Real Estate Co. v. American*

30

40

Order.

Timber Co., *et al.*, 89 N. J. Eq. 293. See also *Lembeck v. Jarvis Terminal Cold Storage Co.*, 70 N. J. Eq. 757''

Karsh will be allowed the amount of his loan, \$2,000, and legal interest. Had the defense of usury been strictly pleaded, interest would have been disallowed; *Dunlap v. Chenoweth*, 88 N. J. Eq. 496.

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ORDER.

Filed November 21, 1922.

This matter being opened to the Court by Harry Green, solicitor for Charles Karsh, and Russell Fleming, Receiver of defendant corporation; and it appearing that the Receiver sold the property of defendant corporation at public auction free and clear of the lien of a chattel mortgage of Charles Karsh for \$2,500.00, said sum with interest from July 18, 1922, being paid into Court, subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed as the Court shall direct, in accordance with order made herein on October 31, 1922; and it further appearing that the said Charles Karsh filed a petition praying that an order be made directing that the Receiver herein show cause why the said sum of \$2,500.00, with interest at 6% from July 18, 1922, should not be paid to said Charles Karsh, and the Court having made such an order on November 2, 1922, and it appearing that said order has been duly served within the time and as required by same on the said Receiver; and upon reading and considering the statement of facts, stipulated by and between the parties hereto, filed herein, the exhibits submitted therewith, and the briefs of respective counsel; and upon the written opinion made herein;

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It is, on this twenty-first day of November, 1922, ORDERED, that the sum of \$2,000.00, with interest from

Order.

July 18, 1922 (4 mos.), of \$40.00, making a total of \$2,040.00, be forthwith paid to Charles Karsh, or his solicitor, Harry Green, from the sum of \$2,500.00, with interest from July 18, 1922, paid into Court by the Receiver herein, pursuant to order made on October 31, 1922; and it is

FURTHER ORDERED, that that part of the application of said Charles Karsh for payment of the balance of \$500.00, with interest from July 18, 1922 (4 mos.), of \$10.00, making a total of \$510.00, be, and the same is hereby denied; and it is 10

FURTHER ORDERED, that the 10 notes secured by the chattel mortgage, and received in evidence, be impounded with the Clerk of this Court.

EDWIN ROBERT WALKER,
C.

Respectfully advised, 20

JOHN H. BACKES,
V.-C.

We consent to the form of the foregoing order.

RUSSELL FLEMING,
Receiver.

HARRY GREEN,
Solicitor for Charles Karsh. 30

Notice of Appeal.

NOTICE OF APPEAL.

Filed December 20, 1922.

The petitioner, Charles Karsh, hereby appeals from so much of the order made in this Court, on November 21, 1922, as denies that part of the application of the said Charles Karsh for payment of the balance of \$500.00, with interest from July 19, 1922 (4 mos.), of \$10.00, making a total of \$510.00, to the Court of Errors and Appeals in the last resort in all causes.

Dated December 18, 1922.

HARRY GREEN,
Solicitor for and of Counsel with
Charles Karsh, Petitioner.

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

HARRY GREEN,
Of Counsel with Petitioner.

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Petition of Appeal.

PETITION OF APPEAL.

Filed January 15, 1923.

New Jersey Court of Errors and Appeals

Between

JOSEPH OVSIOVITCH,

Complainant,

and

FEDERAL TOOL & MANUFACTURING
CORPORATION,

Defendant.

*On Appeal of
Charles Karsh.*

*Petition of
Appeal.*

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*To the Honorable, the Court of Errors and Appeals in
the last resort of causes:*

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The petition of Charles Karsh, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by part of an order made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the twenty-first day of November, 1922, wherein Joseph Ovsiovitch was complainant, and the Federal Tool & Manufacturing Corporation, a corporation, was defendant, in this respect, to wit: That part of said order which denies the application of the said Charles Karsh for payment of the balance of \$500.00, with interest from July 18, 1922 (4 months), of \$10.00, making a total of \$510.00, due on a certain chattel mortgage executed by defendant to your petitioner.

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And your petitioner humbly appeals from that part of the order of the Chancellor, which orders as aforesaid, upon the ground that the same is erroneous, because under An Act entitled "An Act relating to usury," P. L.

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Answer to Petition of Appeal.

1902, p. 459, 4 C. S. 5706, the Receiver of defendant corporation cannot plead or set up the defense of usury to the action brought by your petitioner against the Receiver to recover the moneys which defendant corporation agreed to pay to said petitioner, and for which said defendant corporation executed its promissory notes, secured by a chattel mortgage on its goods and chattels, said notes and chattel mortgage coming within the scope and meaning of said act.

Your petitioner therefore prays, that that part of said order of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

HARRY GREEN,

Solicitor for and of Counsel with Appellant.

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ANSWER TO PETITION OF APPEAL.

Filed January 31, 1923.

The answer of Russell Fleming, Receiver of the Federal Tool & Manufacturing Corporation, respondent, to the petition of appeal of Charles Karsh, appellant.

30 The respondent admits it to be true that a certain order was, on the twenty-first day of November, 1922, made and entered in the Court of Chancery as in the petition of appeal is stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent believes that said order is agreeable to law and equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

RUSSELL FLEMING,

Receiver of Federal Tool & Manufacturing Corporation and Solicitor pro se.

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Exhibit—Mortgage.

EXHIBIT—MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, that *Federal Tool & Manufacturing Corporation, a corp. of the State of New Jersey, having its principal office in the City of Newark, in the County of Essex and State of New Jersey*, party of the First Part, for securing the payment of the money herein mentioned, and in consideration of the sum of One Dollar, to it duly paid by *Charles Karsh, of the City of New York, County of New York and State of New York*, party of the Second Part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do bargain and sell unto the said party of the second part, *his heirs, executors, administrators and assigns*, all the goods and chattels mentioned in the schedule hereunto annexed and now in *161-167 Ogden Street, Newark, Essex County, New Jersey*.

TO HAVE AND TO HOLD all and singular the said goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part, *his heirs, executors, administrators and assigns forever*. AND *it*, the said party of the first part, for *itself, its successors and assigns*, all and singular the said goods and chattels above bargained and sold unto the said party of the second part, *executors, administrators, and assigns*, against *it* the said party of the first part, and against all and every person and persons whomsoever, shall and will warrant and forever defend.

UPON CONDITION that if *it*, the said party of the first part, shall and do well and truly pay unto the said party of the second part, *his heirs, executors, administrators and assigns* *Two Thousand Five Hundred (\$2,500.00) Dollars, payable as follows:*

Exhibit—Mortgage.

Sept. 1, 1922, \$200.	Feb. 1, 1923, \$250.
Oct. 1, " 200.	Mar. 1, " 250.
Nov. 1, " 200.	Apr. 1, " 300.
Dec. 1, " 250.	May 1, " 300.
Jan. 1, 1923, 250.	June 1, " 300.

10 with interest at 6% per annum, as evidenced by promissory notes of even date herewith, it being expressly understood and agreed between the parties hereto, that upon default in the payment of any installment when due, the entire balance, at the option of the party of the second part, or his assigns; shall become due and payable at once, anything hereon or therein to the contrary notwithstanding; then these presents shall be void, AND

20 it, the said party of the first part, for itself, its successors and assigns, do covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, or in case the said party of the first part shall, at any time before the day of payment herein provided for remove the said goods and chattels, or any of them, or permit or suffer any attachment or other process against property to be issued against it, or permit or suffer any judgment to be entered up against it, then the said sum of

30 money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for, and it, the said party of the first part do hereby authorize and empower the said party of the second part his heirs, executors, administrators and assigns, with the aid and assistance of any person or persons, to enter said plant, dwelling-house, store and other premises, and such other place or places whatsoever, in which the said goods and chattels, or any of them, are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom, to retain and

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Exhibit—Mortgage.

pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto it, the said party of the first part, its successors and assigns.

IN WITNESS WHEREOF, it, the said party of the first part has hereunto caused these presents to be executed by its President, attested by its Secretary, and its seal affixed July 18, in the year of our Lord One Thousand Nine Hundred and Twenty-two.

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FEDERAL TOOL & MANUFACTURING
CORPORATION,

By *Joseph Ovsiovitch*,
President.

Signed, Sealed and Delivered
in the presence of

Attest—

Irving W. Teeple,
(SEAL) Secretary.

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

Joseph G. Coney, being duly sworn according to law, on his oath says that he is the Agent for Charles Karsh, the mortgagee in the foregoing mortgage named, and says that the true consideration of the said mortgage is as follows, viz.: The sum of Two Thousand (\$2,000.00) Dollars in lawful money of the United States, this day loaned by mortgagee to mortgagor, and the agreement on the part of said mortgagor to pay the sum, and as, set forth in the foregoing mortgage, which is made a part hereof; the deponent further says that there is due on said mortgage the sum of Two Thousand Five Hun-

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Exhibit—Mortgage.

dred (\$2,500.00) Dollars, besides lawful interest thereon from the 18th day of July, 1922.

Joseph G. Coney.

Sworn and subscribed this 18th day of July, A. D. 1922, before me.

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HARRY GREEN,
M. C. C. of N. J.

SCHEDULE.

The following is the Schedule referred to in the foregoing mortgage:

- | | | | | | | |
|----|---|--|---|-------|-------|------------|
| | 1 | Handy Universal Milling Machine No. 2—all attach. | | | | |
| | 1 | Garvin | “ | “ | “ | 12 |
| 20 | 1 | Rockford | “ | “ | “ | “ |
| | 1 | Milwaukee Shaper 16" stroke | | | | |
| | 1 | Smith | “ | “ | “ | |
| | 3 | Monarch Lathes 13x6 Newest Type All attachments | | | | |
| | 1 | Davis | “ | 14x6 | “ | “ “ “ |
| | 1 | Ames Bench | “ | No. 4 | | “ “ |
| | 1 | Stark | “ | “ | No. 4 | “ “ |
| | 1 | No. 2 Ott Universal Cylindrical Grinder full equipment | | | | |
| | 1 | No. 2 Brown & Scharp Surface | “ | “ | “ | “ |
| 30 | 1 | No. 2 Maxwell | “ | “ | “ | Mag. Chuck |
| | 1 | Tool Grinder | | | | |
| | 1 | Oliver Filing Machine fully equipped (sep. Motor) | | | | |
| | 1 | Bench Filing | “ | “ | “ | |
| | 3 | Allen Drill presses | | | | |
| | 1 | Fairbanks 20" Drill Press (Back-gearred) | | | | |
| | 1 | Excelsior Drill Press. | | | | |
| | 1 | Foster No. 2 Screw Machine | | | | |
| | 1 | Hardening American Furnace (Complete) | | | | |
| 18 | | Vices | | | | |
| 40 | 1 | Speed Lathe | | | | |

Exhibit—Mortgage.

- 1 Fully equipped Tool Room value \$2000.
- 22 New Hangers with ball bearings
- Shafting, pulleys, belting
- 80 ft. New Benches iron legs
- 1 Generator 125 volt.
- 1 7½ H. P. G. E. Motor.
- 1 Garvin Drill (½")

10

OFFICE

- 2 Directors Tables
- 1 roll top desk
- 1 typewriter
- 1 Wales Adding Machine
- 1 Safe 3x4 ft.
- 1 flat top desk
- 2 filing Cabinets
- 5 Chairs
- 1 Time Clock

20

Also all tools, fixtures, equipment, materials and supplies; and all its right, title and interest in goods and chattels of every kind and description, now held, owned, possessed, enjoyed or claimed by the party of the first part, and which it may hereafter acquire and any and every part thereof, it being the intention of the parties to include in the lien of this mortgage all of the assets of the mortgagor now existing and hereafter to be acquired in the progress of its business, including its book accounts, choses in action, and leasehold.

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Federal Tool & Mfg. Corp.,

By Joseph Ovsiovitch,
President.

(SEAL.)

Attest:

Irving W. Teeple,
Secretary.

40

Exhibit—Mortgage.

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

BE IT REMEMBERED, That on this 18th day of July, in the year of our Lord One Thousand Nine Hundred and Twenty-Two, before me the subscriber, a Master in Chancery of New Jersey, personally appeared Irving W. Teeple, who being by me duly sworn on his oath, says that he is the Secretary of the Federal Tool & Manufacturing Corporation, the grantor named in the within Instrument; that Joseph Ovsiovitch is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said ——— President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

Irving W. Teeple.

Sworn and subscribed before me, at
 Newark, the date aforesaid.

HARRY GREEN,
M. C. C. of N. J.

Exhibit—Mortgage.

MORTGAGE
ON GOODS AND CHATTELS
*Federal Tool & Manufacturing
Corporation*
—to—
Charles Karsh.

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Dated—*July 18, 1922.*

Received in the *Register's* Office of the County of *Essex, N. J.*, on the *19th* day of *July*, A. D. 1922 at *11:58* o'clock in the forenoon and Recorded in Book *412* of *Chattel* Mortgages for said County on pages *421-423*

HOWARD S. DODD,
Register.

20

Initialed *F 98*
(Rubber stamped):
Book held by *10*
Paper held by *12*
Read by *10*

HARRY GREEN
Counsellor at Law
Merchants Bldg.
156 Market St.,
Newark, N. J.

30

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Exhibit—Note.

EXHIBIT—NOTE.

\$200.00

New York, July 18, 1922.

October First, 1922 after date We promise to pay to the order of

CHARLES KARSH

10

Two Hundred 00/100

Dollars

at Broad & Market Nat'l. Bank, Newark, N. J.

Value received with 6% interest

FEDERAL TOOL & MFG. Co.

Joseph Ovsiovitch Pres.

Oscar W. Nelson Treas.

4¢ Documentary Stamps

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(The foregoing is true copy of one of a series of notes made and delivered by the mortgagor to the mortgagee, for which the chattel mortgage was executed as security, all the notes being the same except in amounts and maturity dates.)

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Exhibit—Affidavit of Title.

EXHIBIT—AFFIDAVIT OF TITLE.

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

Joseph Ovsiovitch, being duly sworn on his oath says that:

1. He is the President of Federal Tool & Manufacturing Corporation, which is a corporation organized and now existing under the laws of the State of New Jersey. 10

2. He is authorized by said corporation to make this affidavit, and he is cognizant of the facts herein stated.

3. Annexed hereto is a true copy of a resolution passed by the Board of Directors of said corporation, authorizing the officers to execute a chattel mortgage covering the goods and chattels of said corporation.

4. By virtue of said authority, and on behalf of the corporation, he has this day executed a chattel mortgage to one Charles Karsh, covering certain goods and chattels, more specifically mentioned therein, and which the corporation keeps at 161-167 Ogden Street, Newark, Essex County, New Jersey. 20

5. Said corporation is the sole and absolute owner of said goods and chattels, and has full right to sell, transfer and encumber the same, free and clear of liens.

6. Said goods and chattels are free and clear of any and all liens, mortgages, debts and other encumbrances of whatsoever kind and nature. 30

7. Said corporation is solvent, and the value of its assets exceeds its liabilities. The corporation is not insolvent within the meaning of the corporation act of New Jersey, or the bankruptcy laws of the United States, and it has not suspended its ordinary business for want of funds to carry on the same, nor does it contemplate insolvency or a suspension of the business as aforesaid.

Exhibit—Affidavit of Title.

8. He makes this affidavit for the purpose of and with the intent of inducing said Charles Karsh to take a chattel mortgage on the goods and chattels described therein, knowing that he will rely on the statements made herein, and pay a good and valuable consideration to deponent.

Joseph Ovsiovitch, Pres.

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Sworn and subscribed to before me
this 18th day of July, 1922.

HARRY GREEN,
M. C. C. of N. J.

FEDERAL TOOL & MANUFACTURING
CORPORATION

20 THIS IS TO CERTIFY, that a Special Meeting of the Board of Directors of the above-named Corporation was held on the 17th day of July, 1922, at which the following resolution was passed.

“RESOLVED, that the Board of Directors hereby authorize its officers to borrow the sum of Two Thousand (\$2,000.00) Dollars, and to secure the same by a chattel mortgage on its goods and chattels.

30 FURTHER RESOLVED, that the said officers are authorized to pay the necessary bonuses, charges and expenses for borrowing said money, and to execute any paper that may be necessary for procuring said loan.”

Annexed hereto is a true copy of waiver of meeting signed by all the directors.

Dated, Newark, New Jersey, July 17th, 1922.

Irving W. Teeple,

(SEAL)

Secretary.

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Exhibit—Affidavit of Title.

FEDERAL TOOL & MANUFACTURING
CORPORATION

Waiver of Notice of Special Meeting of the
Board of Directors

The undersigned, being all the directors of the above 10
named corporation, do hereby waive notice of the time,
place and purpose of the special meeting of the directors,
and we do hereby designate the 17th day of July, 1922, at
3 P. M., as the time and 161-167 Ogden Street, Newark,
New Jersey, as the place to hold said meeting; the pur-
pose thereof being to authorize the borrowing of money
and the securing of the same by a chattel mortgage on its
goods and chattels.

Dated, July 17th, 1922.

Joseph Ovsiovitch 20
Oscar W. Nelson
Irving W. Teeple
Lillian Ovsiovitch

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New Jersey Court of Errors and Appeals

Between

JOSEPH OVSIOVITCH,

Complainant,

and

FEDERAL TOOL & MANUFACTURING
CORPORATION,

Defendant.

*On Appeal of
Charles Karsh
from Order
made in Court
of Chancery.*

APPELLANT'S BRIEF.

This is an appeal of Charles Karsh, from that part of an order made in the Court of Chancery, dated November 21st, 1922, which permits receiver of defendant corporation to plead or set up the defense of usury on an obligation made by said defendant corporation to appellant, although P. L. 1902, p. 459, 4 C. S. 5706, prohibits the interposition of such a defense "on any obligation executed by said corporation."

Appellant contends that that part of said order is erroneous, because under a true construction of said Act, a corporation and the receiver thereof cannot plead or set up the defense of usury.

Facts.

The facts are brief, and the issue is square.

Defendant corporation executed a chattel mortgage on its machinery, etc. (Case, p. 11), to appellant for \$2,500, evidenced by promissory notes (Case, p. 18), to secure a loan of \$2,000. The appellant paid all expenses incident to the loan, including brokerage, attorney's fees, etc. (Case, p. 4).

Shortly after the execution of said mortgage and notes, and before any payments were made thereon, the corporation became insolvent and a receiver was appointed.

Appellant consented to the sale of said machinery free and clear of the lien of said mortgage, the moneys realized from said sale to be deposited in the Court of Chancery, subject to the lien of said chattel mortgage.

After the sale, appellant made application to the Court of Chancery for payment of the full amount of said mortgage and notes, with interest.

The Court of Chancery, made an order (Case, p. 6) allowing \$2,000, with interest, but denying payment of the balance of \$500, and interest thereon, from which latter part of said order appellant appeals as erroneous.

POINT I.

Appellant contends that under an act entitled "An Act Relating to Usury," P. L. 1902, p. 459, 4 C. S. 5706, the defendant corporation and the Receiver cannot plead or set up the defense of usury.

It appears that the only occasion this Court had to construe said act was in the case of *Lembeck v. Jarvis Terminal Cold Storage Co.*, 70 Eq. 757, 64 A. 126, where Reed, J., speaking for the Court, said:

P. 761:

"* * * It is obvious, however, that the statute was passed to protect those that had *made loans of money* and had taken the *paper or bonds of a corporation*. As to such creditors it was doubtless intended to *abolish the defense of usury in toto*.
* * *"

P. 762:

"There are statutes in several states prohibiting the defense of usury on the part of corporations, and concerning them Mr. Cook remarks that in all the states *the courts go to the extreme in defeating this defense*, if possible. Cook Corp. 766b."

In *Hill v. Bloom*, 41 N. J. Eq. 276, 278, Prerogative Court, Ordinary Runyon, C. (1886), a provision of a will provided that "if, at the time of the distribution of said estate or any part thereof, there shall be due to my estate, from any of said legatees, *obligations of any kind* * * *, then such obligation should be first deducted * * *."

In construing the intent of the testator, the Court said, "By the term 'obligation' he meant to include notes and all instruments by which the maker thereof binds himself to pay money."

In *Elsasser v. Haines*, 52 N. J. L. 10, Chief Justice Beasley construed the word obligation in connection with its common meaning, as follows (at p. 21):

"Plainly, there can be no denial that the expression 'obligation' in its common acceptation, will embrace every duty imposed by law, whether such be the creature of a statute, of a record, of a recognition, of a sealed instrument, or of a simple contract. * * *"

In *Munzinger v. United Press Co.*, 65 N. Y. Sup. 194-196; 52 App. Div. 338, the Court, construing the word obligation, said:

"The word 'obligation' originally meant a bond containing a penalty, with a condition for the payment of money or to do or suffer some act or thing. Co. Litt. 172a. The meaning of the word, however, has gradually been enlarged by the Court, and it has ceased to be restricted to a bond or writing obligatory, and has been extended to mean a paper by which some fixed duty is assumed to be performed at a certain time, or an instrument in writing whereby one party contracts with another for the payment of money at a fixed date, or for the delivery of specific articles. But, however various have been the definitions given the word, the one essential element has always been that it must be written paper. The duty assumed by it must be a fixed duty. Bouv. Law Dict. tit. 'obligation.'" Words & Phrases, 1st Series, Vol. 6, p. 4878.

The reason for the rule in not permitting corporations to set up the defense of usury, is admirably set forth in the case of *Southern L. Ins., etc., Co. v. Packer*, 17 N. Y. 51, 53, as follows:

“These laws were originally based upon the assumption that the needy borrower was in some degree in the hands of the lender. Government has therefore assumed that it was a duty incumbent upon it to protect the former against the rapacity of the latter by adequate pains and penalties. In regard to natural persons, subject to the contingencies of business, often with little or no capital to start with, these considerations might apply with great force; but in regard to corporations organized for the purpose of concentrating in one undertaking the contributions of a large number of individuals until the aggregate shall amount to the capital supposed to be requisite for the successful prosecution of such undertaking, the legislature may well have assumed that no such protection was necessary; that if corporations thus organized became borrowers it would not be from necessity, but voluntarily, to enable them to carry forward some enterprise which afforded a reasonable expectation of profits sufficient to enable them to repay the necessary interest without loss or sacrifice.”

Such acts (statutes prohibiting corporations from interposing defense of usury) in effect repeal the usury laws in so far as they affect loans of any kind to corporations, 39 Cyc. 1001.

However, the receiver submits the cases of *Mazzarin v. Hudson County R. E. & B. Co.*, 80 N. J. L. 35 (Supreme Court), and *Seacoast Real Estate Company v. American Timber Co.*, 89 N. J. Eq. 293 (Chancery), to show that the usury act only applies to corporate obligations that go on the market and into the hands of the public, and that the mortgage executed in this case is not such an obligation.

In *Mazzarin v. Hudson County R. E. & B. Co.*, *supra*, the Court was dealing with an agreement for a broker's com-

mission on a loan made to a corporation, in which the Court held that an agreement of this character was not comprehended within the meaning of the word "obligation." But the Court said further in that matter, that, "In view of the uniform legislative policy of the State in the matter of usury, the words, 'obligation executed' by a corporation refers to corporate obligations in the sense of bonds, mortgages, debentures and the like that go on the market and into the hands of the public." Not only was this dicta, and not essential to the decision made in this case, but the uniform legislative policy seems to be exactly opposite. "The historic Usury act," to use the words of Justice Garrison, in *Roth & Miller v. Temkin*, 90 N. J. L. 39, made the penalty for a violation of said act a forfeiture of principal and interest. This is still the law in our Sister State of New York. Then our Legislature relaxed the act, so as to forfeit only interest and costs, and then came the further relaxation as contained in the Act of 1902, regarding corporations, now under construction. Next the Legislature allowed 3% per month, which is at the rate of 36% per year, on loans of \$300 or under (P. L. 1914, p. 75, C. S. 1st Supp. 42), and then permitted Building and Loan Associations, which cater to the man of small means, to charge 2% per month, which is at the rate of 24% per year, on dues in arrears (P. L. 1919, Chapter 42), and, mark you, *premiums on loans without limitation or restriction as to percentage, and providing further that no premiums shall be deemed usurious* (P. L. 1918, Chapter 127, p. 291). Also see Pawnbrokers' Act (P. L. 1876, p. 119, Rev. 1877, p. 811), which permits pawnbrokers, who cater to those in need and distress, to charge 25% per annum up to \$25 and 10% on sums exceeding \$25. In 1920, the Legislature further relaxed its so-called policy regarding usury, by permitting Provident Loan Associations, which cater to the needy, to charge 2% per month, which is at the rate of 24% per year, for 2 months or less and not exceeding 1½% per

month, which is at the rate of 18% per year, for any period after 2 months, on loans up to \$300 (P. L. 1920, p. 443, Sec. 8).

Does it not seem that the uniform policy of the legislature is to gradually lessen the restrictions of the Usury Act, instead of making it more stringent?

In *Seacoast Real Estate Co. v. American Timber Co.*, *supra*, which was an action to foreclose as a mortgage a conveyance made by the defendant, Vice-Chancellor Foster, in reciting the facts (at p. 299), said:

“The pleadings and proofs show that notes were made and were payable in Pennsylvania under the Pennsylvania act on usury and negotiable instruments. P. L. (Pa.) 1901, p. 208, sections 52, 58. Only the amount actually loaned on them, with legal interest, can be recovered, and the law of Pennsylvania governs such a situation, *Trust Company v. Electric Company*, 57 N. J. Eq. 42.”

He then went on further to state, that:

“The right of the timber company to raise the defense is not affected by the act of 1902, as this statute has been held to be limited in its application not to the ordinary debts of a corporation, but to obligations of a corporation which have been bought in the open market and have gone before the public for investment.”

The Court there was dealing with Pennsylvania notes and Pennsylvania Law, and our Act of 1902, was therefore not applicable.

Now to go back to the language of the Act of 1902. It says, in part, “on *any obligation* executed by said corporation.” Is there anything doubtful, intricate or complex about the phrase “*any obligation*”? The Legislature could not have used a phrase more apt or broad. If the Legislature had intended to restrict the application of this Act to a *certain* type of obligation, it seems to me, it would have expressed itself in different language, and not used the comprehensive word “*any*.”

Assuming that there was such a Legislative policy, (which is disputed in the matter of usury), as stated by Justice Garrison, in *Mazzarin v. Hudson, &c., Co., supra*, can such a policy vary and alter the express clear and unequivocal language of the Legislature?

In statutory construction, words are given their ordinary meaning. The leading cases on statutory construction in this State, seem to be *Gibbons v. Ogden*, 8 N. J. L. 288, and *McLorinan v. Bridgewater Township*, 49 N. J. L. 614, where the Court said as follows:

“Courts of law may, where the words of an act convey no clear meaning, as to the means of explaining an intricate or perplexed passage, resort to a consideration of the subject matter, and the nature of the mischief intended to be remedied; but where words clash with no other paragraph, section or sentence, in the same, or any other statute, carry a plain and manifest meaning, they overcome all rules of construction, and must be taken as they read.

Gibbons v. Ogden, supra, at p. 295.

“They (the Legislature) are supposed to use words as they are commonly used and understood. But if they disregard the lexicographer, or use words inappropriately, still if they in their context convey a clear meaning to those charged with the duty of interpretation, that meaning is the expression of the law.”

McLorian v. Bridgewater Township, supra, at p. 616.

I also want to call the Courts' attention to another phase of the aforementioned enactments which uniformly tend to lower the bars of usury, and that is, that all such enactments seem to be for the benefit of the person of small means, and the person in need and distress. Therefore, is it not probable, that the Legislature comprehended the small corporation, as well as the large corporation, in the act of 1902, because practically only the large cor-

poration puts its obligations on the market and into the hands of the general public.

The decision of the Court of Chancery, if permitted to stand, will discriminate against the small corporation, which has to buy money on the market in its small way, just as the large corporation does in its large way.

It is difficult enough, even without question of usury, for a small corporation to raise money, because it has not the resources and securities to offer that a large corporation does, and to permit defense of usury to be interposed on other than bonds placed on market and in hands of public, will practically stifle the small corporation.

I submit that under a true construction of the said Usury Act, it is unnecessary that the "obligation go on the market and into the hands of the public," as set forth in the foregoing decisions of the lower courts, but that the same applies to any obligation whether it goes on the market or not, as stated by this Court in the case of *Lembeck v. Storage Co., supra*.

And incidentally, this appears to be the only expression on the construction of the Act of 1902, by this Court, as in the *American Timber Co., case supra*, although an appeal was made to the Court from the Court of Chancery, the question was apparently not raised and was not discussed in the opinion of this Court (92 N. J. Eq. 219).

In the State of New York no such construction is given to their Usury Act, passed in 1850, which prohibits corporations from interposing the defense of usury in any action.

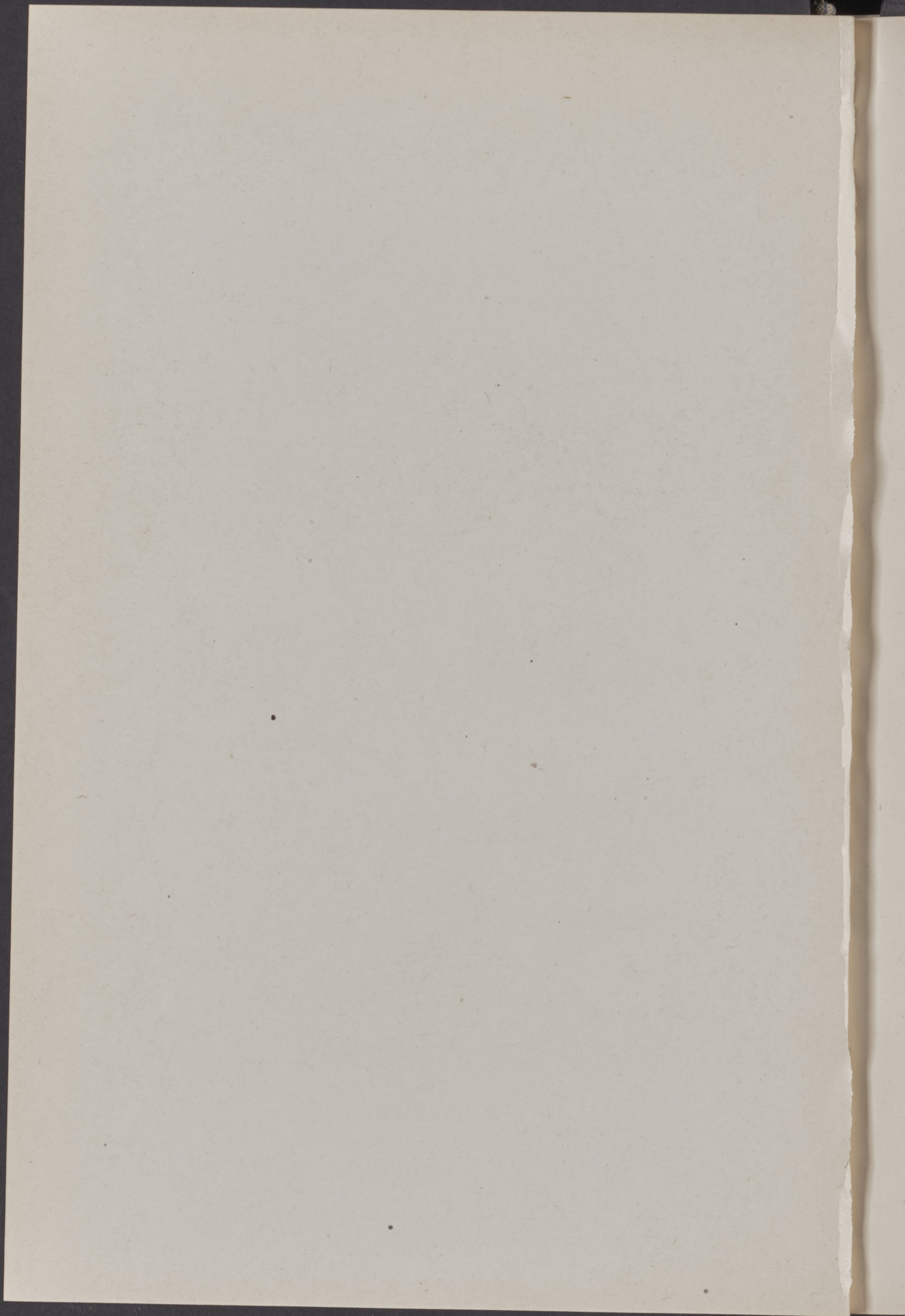
I have made an exhaustive search of decisions in our State, and also Words and Phrases, but I am unable to find any decisions construing the word "obligation" to have such a narrow or restricted meaning, except the cases hereinbefore cited. And in those cases, I submit that the constructions there given were dicta, and that this Court has given it a construction of much broader effect in the case of *Lembeck v. Storage Co., supra*.

Receivers of a corporation are forbidden the defense of usury, 39 Cyc. 1001, *Curtis v. Levitt*, 15 N. Y. 9.

The appellant, therefore, respectfully submits that under a true construction of the Usury Act, the Corporation and Receiver in this case are prohibited from interposing the defense of usury, and that that part of the order of November 21st, 1922, denying the application of the appellant for payment of \$500, with interest from July 18th, 1922, should be reversed, set aside for nothing holden.

Respectfully submitted,

HARRY GREEN,
Solicitor for and of Counsel with
Appellant, Charles Karsh.



New Jersey Court of Errors and Appeals

Between

JOSEPH OVSIOVITCH,

Complainant,

and

FEDERAL TOOL & MANUFACTURING
CORPORATION,

Defendant.

*On Appeal of
Charles Karsh
from Order
made in Court
of Chancery.*

BRIEF OF RECEIVER, RESPONDENT.

Facts.

This is an appeal from part of an Order made in the Court of Chancery on the 21st day of November, 1922, in a certain cause wherein JOSEPH OVSIOVITCH was complainant and the FEDERAL TOOL & MANUFACTURING CORPORATION was defendant which denies the application of CHARLES KARSH, mortgagee, for payment of \$500 with interest thereon from July 18, 1922, amounting to \$10, making a total of \$510, which is the balance claimed due on a certain chattel mortgage, executed by defendant corporation to said CHARLES KARSH, the appellant herein.

On July 18, 1922, the FEDERAL TOOL & MANUFACTURING CORPORATION borrowed \$2,000 from CHARLES KARSH and gave him its promissory notes aggregating \$2,500 with interest at six (6%) per centum and secured the notes by a chattel mortgage on its tools, fixtures, equipment, book accounts, leasehold and all of the other assets of the corporation.

The chattel mortgage was duly recorded and the notes were not negotiated.

On August 29, 1922, the Court of Chancery of New Jersey appointed a Custodial Receiver for the defendant

corporation and on October 3, 1922, a Statutory Receiver was appointed.

Subsequently the Receiver was directed to sell all the assets of the corporation free and clear of the encumbrance of said chattel mortgage and to pay the sum of \$2,500 with interest, into court "there to remain subject to the same liens and equities of all parties in interest as was the property before sale to be disposed of as the Court shall direct."

The question of the amount due the mortgagee was submitted to the Court for determination and an opinion rendered thereon by Vice-Chancellor Backes (State of Case, p. 5).

And in pursuance of the views therein expressed the Court, on November 21, 1922, entered the order (State of Case, pp. 6 and 7) adjudging that only \$2,000 and interest was legally due the mortgagee, from part of which order this appeal has been taken.

It is not disputed that the actual amount of cash received by the mortgagor was only \$2,000 the additional \$500 being a "bonus" for the making of the loan to the corporation and included attorneys' fees and other incidental expenses.

But the mortgagee claims that usury cannot be set up by the receiver because of Section 7 of "An Act relating to usury" (P. L. 1902, p. 459; 4 N. J. Comp. Stat. 5706).

The case *sub judica*, then, turns on the construction to be given this Statute.

LAW.**Point I.**

A bonus taken for making a loan constitutes usury.

Hughson v. Newark Mortgage Loan Co., 57 N. J. Eq. 139; 41 Atl. 492;

Leipziger v. Van Saun, 64 N. J. Eq. 37; 53 Atl. 1.

In the case at bar the amount of money actually advanced was \$2,000. The notes and chattel mortgage provide for the payment of interest at the rate of six per cent. on \$2,500. Plainly that is a contract for the payment of more than \$6 for the forbearance of \$100 a year as prohibited by 4 Comp. Stat. 5704 Sec. 1 (Rev. 1877, p. 519, as amended P. L. 1878, p. 30).

Then \$500 bonus, in the language of Vice-Chancellor Pitney in *Leipziger v. Van Saun*, *supra*, page 42, was "taken" in the sense in which that word is used in the first section of the act, by the lender from the borrower, as interest over and above that provided for in the contract. The result is that the whole transaction, so far as the contract for the payment of interest goes, was expressly forbidden and rendered unlawful by the first section of the act."

The case is analogous to that of *McFadden v. Palmer, et al.*, 83 N. J. Eq. 621, 92 Atl. 396 in which this Court held that where defendants applied to complainant to secure a loan of \$3,500 upon their house and lot, and complainant took from them a written agreement to pay him \$275 for services in securing the loan, in addition to expenses of search fees, etc., the payment of such amount for services made the mortgage usurious.

And where a contract is tainted with usury only the amount actually lent may be recovered (Rev. 1877, p. 519; 4 N. J. Comp. Stat. 5705 #2).

Point II.

Section 7 of "An Act Relating to Usury" (P. L. 1902, Chapter 144, p. 459; 4 Comp. Stat. 5706) is not a bar to the defense of usury by the mortgagor corporation, because:

1. This statute does not even purport to repeal any part of our Usury Act.

2. "A general statute, without negative words, will not repeal the particular provisions of a former one unless the two acts are irreconcilably inconsistent." *Bogardus v. Gordon*, 53 N. J. Eq. 41, 42 and authorities therein cited.

In *Steel v. Freeholders of Passaic*, 89 N. J. L. 609, 611; 99 Atl. 318, 319, Mr. Justice Trenchard, speaking for this Court, said:

"The cardinal principle for the construction of statutes is that they are to be so construed that if possible full effect shall be given to all parts of the statute."

Point III.

Section 7 of "An Act Relating to Usury" (P. L. 1902, Chapter 144, page 459, 4 Comp. Stat. 5706), is not inconsistent with the other sections of our usury laws and should be construed with them.

Our statutes are similar to those of the State of Illinois where it was held as follows:

Union Nat. Bank of Chicago v. Louisville, N. A. & C. Ry. Co., 34 N. E. 135, 139 (Supreme Court of Illinois, May 9, 1893):

"Sec. 11" (Act July 1, 1879) "No corporation shall hereafter interpose the defense of usury to any action. * * *"

"But it is urged that the effect of section 11, which prohibits corporations from interposing the defense of usury, is to create an exception in cases where corporations are debtors, so as to take all cases of that character out of the operation of the statute. The theory seems to be that, because a cor-

poration cannot set up usury as a defense, any person or corporation dealing with a corporation, may lawfully exact such rate of interest as may be agreed upon, whether in excess of the statutory limit or not, so that, where a corporation is the debtor, no rate of interest is fixed by the laws of this state. To this view we are totally unable to yield our assent. * * * While corporations cannot enforce the forfeitures imposed by our usury laws, it does not follow that the statutory prohibition against exacting or paying more than the lawful rates of interest has no application to them * * * No agreement between parties to do a thing prohibited by law, or subversive of any public interest which the law cherishes, will be judicially enforced. The general rule, therefore, is that any act which is forbidden either by the common or the statutory law, whether it is *malum in se* or merely *malum prohibitum*; whether indictable, or only subject to a penalty or forfeiture, or however otherwise prohibited by statute or the common law—cannot be the foundation of a valid contract. Bish. Cont. #470, 471, and authorities cited in notes. * * *

“We are of the opinion that the legal conclusion from the admitted facts is that the agreement to pay the money now sought to be recovered is usurious and void.”

Dorothy v. Commonwealth Commercial Co., 116 N. E. 143, 151 (Supreme Court of Illinois, April 19, 1917):

“Section 11 of the Interest Act provides that ‘no corporation shall hereafter interpose the defense of usury in any action.’ Plaintiffs in error contend that because of this provision of our statutes defendant in error, as trustee in bankruptcy of a corporation, cannot raise the question of usury in this case. This contention is fully met by what was said in *Union Nat. Bank of Chicago v. Louisville, New Albany & Chicago Railway Co.*, 145 Ill. 208, 34 N. E. 135. We there held that while a corporation cannot, on account of said section 11, insist upon the forfeiture of all interest, as provided by section 6 of the Interest Act, where the debtor has contracted to pay usurious interest, yet said section 11 does not prevent the debtor corporation from insisting that

only interest at the legal rate shall be allowed in determining the amount due the creditor.

The judgment of the Appellate Court is affirmed."

Point IV.

Section 7 of "An Act Relating to Usury" (P. L. 1902, Chapter 144, page 459; 4 Comp. Stat. 5706) has been held to apply not to the ordinary debts of a corporation "but to obligations of a corporation which have been bought in the open market and have gone before the public for investment."

Mazarin v. Hudson County Real Estate & Building Co., 80 N. J. L. 35, 76 Atl. 322 (N. J. Supreme Court, 1910).

Garrison, J. "The fact that the defendant is a corporation does not bar it from setting up this defense by reason of 'An Act relating to usury' (P. L. 1902, p. 459), which is as follows:

"'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.'"

"'In view of the uniform legislative policy of the state in the manner of usury, the words "obligation executed" by a corporation refers to corporate obligations in the sense of bonds, mortgages, debentures, and the like that go on the market and into the hands of the public. It is not rational to suppose that the Legislature intended to go further and weaken its public policy against usury by the construction that would make "obligation" apply to an agreement to pay a usurious commission to an agent.'"

In *Lembeck v. Jarvis Terminal Cold Storage Co.* (Court of Errors and Appeals, 1905), 70 N. J. Eq. 757, 761; 64 Atl. 126, which involved an appeal from orders made in the cause by the Court of Chancery relating to the distribution of the assets by the receivers of an insolvent corporation, the construction of the Act of 1902 came before the Court.

Mr. Justice Reed, speaking for a unanimous Court there, said:

“It is obvious, however, that the statute was passed to protect those that had made loans of money and had taken the paper or bonds of a corporation.”

It is respectfully submitted that the word “and” used above is conjunctive and not disjunctive and further that the words “paper or bonds” have a technical meaning indicating negotiable securities dealt in upon the open market where they come into the hands of innocent third parties, for value, and without notice of the usury.

In *Seacoast Real Estate Co. v. American Timber Co., et al.*, 89 N. J. Eq. 293, 300; 104 Atl. Rep. 437, 439, on a bill to foreclose a real estate mortgage, Vice-Chancellor Foster said:

“All the defendants have pleaded usury in this case * * *. The right of the timber company to raise the defense is not affected by the Act of 1902, as this statute has been held to be limited in its application, not to the ordinary debts of a corporation, but to obligations of a corporation which have been bought in the open market and have gone before the public for investment

Lembeck v. Storage Co., 70 N. J. Eq. 757, p. 761, 64 Atl. 126; *Mazarin v. Building Co.*, 80 N. J. Law 35, 76 Atl. 322.”

On appeal from the Court of Chancery, the above question was apparently not raised and was not discussed in the opinion of this Court 92 N. J. Eq. 219; 113 Atl. 489.

Great emphasis was laid by appellant, in the Court below, upon what Mr. Justice Reed said in this Court in *Lembeck v. Jarvis Terminal Cold Storage Co.*, 79 N. J. Eq. 757, 762, where he cites *Cook Corp* #766 b.

An examination of that work will, however, show that the statement there made is in entire accord with the conclusions of Vice-Chancellor Foster in *Seacoast Real Estate Co. v. American Timber Co., supra*, that the act only applies to corporate bonds that have been bought in the

open market and have gone before the public for investment.

Professor Cook's title to this section is "Bonds and Coupons" and, after making the statement quoted he cites as his New Jersey authority, "Gen. Stat. (1895) Vol. 3, p. 3703, #6" which provided:

"That no bond, mortgage or other security for the payment of money heretofore made or issued, or that may hereafter be made or issued by any railroad or canal corporation created by or under the laws of this state shall be held, deemed or considered invalid, because such bond, mortgage or other security may have been made, issued, sold, assigned or otherwise disposed of by such corporation below the par value thereof, provided, such bond, mortgage or other security shall be valid on its face." (P. L. 1855, p. 500.)

Point V.

To hold that a bonus, given to obtain a loan to a corporation, shall be a lien on the assets of said corporation prior to those for labor or services by laborers and workmen in the regular employ of such corporation, would be to construe the act *sub judica* as repealing P. L. 1896, p. 306, 2 Comp. Stat. 1651, # 84, which provides that wages due workmen within two months of insolvency proceedings shall be prior to all other liens except that of a chattel mortgage recorded within the same period "for money loaned."

To hold that "money loaned" means a bonus would be a novel construction.

Assuming that only a fraction of the priority wage claims could be paid, it is respectfully submitted, it could not have been the intention of the legislature to have these claims further reduced by permitting the payment of a bonus to a chattel mortgagee.

Point VI.

*The whole and every part of the order appealed from
should be affirmed, with costs.*

Respectfully submitted,

RUSSELL FLEMING,

Receiver and Solicitor pro se.

JAMES L. HANDFORD,

Of Counsel with Receiver.

