NEW JERSEY

Court of Errors and Appeals.

ISAAC N. QUIMBY, *Plaintiff in Error,* *vs.* SAMUEL B. DERRICKSON, who sues, &c., *Def't in Error.*	*Writ of Error to Supreme Court.*

Brief and Points for Plaintiff in Error.

CASE.

The plaintiff below claims of the defendant below, $120 and interest, as commissions for negotiating or procuring a loan of $12,000 for the plaintiff in March or April, 1873.

The facts as proved are as follows:

1st. In March, 1873, the plaintiff was introduced to Dr. Quimby, by Alexander Berlew, a real estate broker in Jersey City, to whom Dr. Quimby had applied to procure him a loan of $12,000.

2d. Quimby told Derrickson there was a mortgage on his property of $10,000, and he wanted a loan of $12,000 to take it up, or would take $10,000 if he could get no more.

Derrickson swears that Quimby told him if he would procure the loan, or introduce him to parties who would make the loan, he would give him (Derrickson) one per cent.

See Derrickson's testimony, p. 4, line 33.

3d. That an agreement between Quimby and Derrickson was drawn up by Berlew and signed by Dr. Quimby. It is claimed, this agreement is lost. Burlew swears to the contents of it. (Page 7, line 4). He says "The language of that paper was, as near as I can recollect, I authorize so and so to procure a loan of $12,000 for me, for which I agree to pay him one per cent."

Derrickson says the original had this clause.

"I hereby authorize S. B. Derrickson to negotiate this loan." (Page 5, line 30).

4th. That Derrickson applied to several brokers in New York, to procure the loan. Among others he applied to Coudert Brothers. His mode of application was to make copies of Dr. Quimby's application and leave a copy with several loan Brokers in the city of New York. One of these papers he left with Coudert Brothers.

See Derrickson's testimony, page 4, line 36.

" " " 5, last line.

Burlew further says (page 6, line 29), "he wanted Derrickson to get the money as cheap as he could; Derrickson told him he might have to pay a bonus; there was some talk that he would have to pay five or six per cent. for the money.

Coudert Brothers had a client by the name of Quevada, who had money to loan. They sent the paper which Derrickson had left at their office to Mr. Boyd, their agent in New Jersey, to investigate the property and make the loan to Dr. Quimby. Boyd saw Dr. Quimby and made an agreement with him to procure the loan for a commission of ten per cent. This agreement was endorsed on the back of the paper which Derrickson left at the office of Coudert Brothers. This paper, with Boyd's agreement, is printed on pp. 15 and 16 of Paper Book.

On this state of facts, the defendant below moved the Court to nonsuit the plaintiff, because the evidence was not sufficient to sustain the action.

This motion the Court overruled (see Paper Book, p. 9, line 18.)

I.

Upon this evidence we insist that the plaintiff is not entitled to recover, because the contract between Dr. Quimby and Samuel B. Derrickson, being a contract to procure a usurious loan, is illegal, against public policy and void.

The agreement was to procure a loan at a usurious rate of interest, at a bonus of 5 or 6 per cent. (see testimony of Alexander F. Berlew, p. 6, l. 20.)

I submit a broker cannot recover compensation for procuring a loan at an illegal rate of interest. Such a contract ought not to be sustained by the Courts. It is illegal and against public policy.

See Gregory *ats.* Wilson, 7 Vr., 315.

In Bartlet *vs.* Vinor Carthew, 252; Skinmer's R., 322, Holt, *C.J.* said: "Every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract, though the statute itself does not mention that it shall be so.

1 Pars. Ct., 382 and notes.
Jackson *vs.* Walker, 5 Hill, 27.
Cundell *vs.* Dawson, 4 C. B., 376.

In Smith *vs.* Mawhood, 14 Mes. & Welsb, 452.

It was held that where it appears to be the intention of the legislature to prohibit a contract, as well as impose a penalty for making it, such contract is illegal and void.

5 Vin. Abr., 98, Condition Y., 2.

If the condition be to do a thing against law, the obligation is void.

8. All intances of conditions against law, in a legal sense, are reducible under one of these heads: 1st. either to do *malum in se*, or malum *prohibitum*, 2nd, to *omit the doing* of something that is a *duty*. 3rd, *to encourage such crimes and omissions.* And such conditions as these, the law will always and without any regard to circumstances, defeat.

In *Nerot v. Wallace*, 3 T. R. 23, *Ashurst J.*, said,

In order to found a consideration for a promise, it is necessary that the party by whom the promise is made, should have the power of carrying it into effect, and secondly that the thing to be done, should in itself be legal.

In this case, Derrickson's undertaking was to procure an illegal loan. The loan which he claims he was instrumental in procuring, was made in violation of law. If Quevada got any portion of the $1,200, Quimby paid for the loan, the contract was in violation of the 1st Section of the "Act against Usury. If he did not get any part of the $1,200 paid by Quimby, then the contract was in violation of the 5th Section of the same act. Rev. 519.

In *Wheeler* v. *Russell*, 17 Mass., 258, it was held, That where the consideration of an agreement is in violation of a statute, no action can be maintained upon it.

Suppose Derrickson had brought Queveda to Dr. Quimby, and Quevada had signed the contract agreeing to make the loan for a bonus of 10 per cent., and after Dr. Quimby had made all his arrangements, had the title searched, &c., Quevada had backed out and refused to make the loan. Could Dr. Quimby have maintained an action for damages. To such an action could not Quevada successfully plead that his contract was void, being in violation of a statute?

And under such circumstances could Derrickson recover commissions for having procured a void contract?

In Sharp *et al. v.* Teese, 4 Halst. R., 352. It was held that an attempt to contravene the policy of a public statute, is illegal, though the statute contain no express prohibition of such attempt.

Territt *v.* Bartlett, 21 Vt., (6 Washb.) 184.
Bancroft *v.* Dumas, 21 Vt., (6 Washb.) 456, are to the same effect.

The test whether a demand connected with the illegal transaction can be enforced at law, is that the plaintiff

requires the aid of the illegal transaction to establish his case.

Scott *vs.* Duffy, 14 Penn. St. R., (2 Harris), 18.
Buck *vs.* Allen, 26 Vt., (3 Deane), 184.

In Gray *vs.* Hook, 4 Comstock, 449, it was held that all agreements by which one person engages to pay another for his aid or influence in procuring an appointment to office are illegal and void.

Where the Statute imposes a penalty for the making of a particular contract, the making of the contract is impliedly prohibited, and the contract is thereby rendered illegal and void.

Brackett *vs.* Hoyt, 9 Foster, (N.H.) 264.

In Sites *vs.* Sheets, 7 Ind., 132, it was held that "A contract for or about any matter or thing which is prohibited by Statute is void, though the Statute does not make it so.

In Harris *vs.* Roof's Executors, 10 Barb., S. Ct. R. 489, it was held that an agreement to pay for services, in personally soliciting members of the Legislature to vote for a private claim against the State could not be enforced.

Bryan *vs.* Reynolds, 5 Wis., 200 S. P.

See also, *Kibbin v. Haycraft* 26 Mis. (5 Jones) 396, Norris *v.* The Providence Tool Co., 2 Wall., 45.

The Court below found that there was no proof of usury; that the ten per cent. was paid to Boyd, that there is no proof that any part was paid to the lender.

See finding of District Court, page 11, line 28.

If this is so, then the contract between Quimby and Boyd was a violation of the 5th Section of the Act against usury. And Derrickson's demand is for procuring a contract in violation of law.

II.

Admitting that Quimby did agree to pay to Derrickson, one per cent on the amount of the loan, if plaintiff would find a party, who would lend the defendant $10,000 or $12,000, for three years or more, as the Judge of the District Court found. (See 2nd finding, on page 11), the evidence shows that Derrickson never performed the contract on his part.

The evidence already referred to shows that Derrickson agreed to find a party who would loan the money, but that the Dr. might have to pay a bonus of five or six per cent. for the money.

See Alexander F. Berlew's Testimony, (page 6, line 31).

A man was found who made the loan without any bonus.

See finding of District Judge, (page 11, line 28).

But he was not found by Derrickson.

But Derrickson claims that he is entitled to one per cent., because Coudert Brothers found the man who would loan the money, and their attention was called to Quimby by him. But this does not entitle him to his commission.

This is in effect, simply one broker going to another

broker and saying I have a customer who wants to borrow $12,000, can you get him the money. The second broker says, I can find a man who will loan him the money, but for procuring the loan for your customer he must pay me a brokerage of ten per cent. The second broker thereupon goes to the customer and says to him, I can procure you this loan, but I must have ten per cent. brokerage for my services. The customer makes this contract and pays the second broker for procuring the loan.

The first broker may have some equitable claim on the second broker for a division of the ten per cent.; but certainly has no claim on the borrower for the one per cent.

All Derrickson did, therefore, was to send to Quimby another broker, who made a contract with Quimby to procure the loan for a commission of ten *per cent.*

Derrickson did not negotiate the loan—did not procure it—did not introduce Quimby to parties who would make the loan. Coudert Brothers, through Boyd, performed all that service, and claimed and got the pay for it, much larger pay than Derrickson agreed to do it for.

Derrickson did not know Quevada, who owned the money, and who loaned it to Quimby—never saw him—never heard of him till after the loan was made (see Derrickson's testimony, p. 6, line 8.)

This case is within the principle of the case of Vreeland *vs.* Vetterlein, 4 Vroom, 247.

The learned Justice who wrote the opinion in the Supreme Court in this case thinks it is not similar.

In the case of *Vreeland vs. Vetterlein* several brokers were employed by the seller to sell his land. One of

of them found a purchaser, but could not persuade him to pay the price fixed. The purchaser went to another of the brokers, who persuaded him to pay the price. The seller conveyed the property, and paid the last broker the commissions.

The first broker sued the seller for the commissions. The Court held he could not recover.

The only difference between the two cases is: In this case Derrickson, the first broker, put the procuring of the loan in the hands of the second broker, Coudert Brothers, who procured the loan, on a contract made by them with Quimby, and received the brokerage fees for the service.

It seems to me the two cases are precisely alike in principle.

III.

On the trial the Judge admitted illegal evidence.

The paper printed on pages 15 and 16 Exhibit A. was improperly admitted in evidence (see page 5, line 6).

It does not contain the alleged contract. It seems to have been altered, and no explanation of the alterations made.

There is no evidence that it is a copy of Dr. Quimby's original application, which they claim is lost.

IV.

The Court overruled and rejected legal and competent testimony offered by the defendant.

1. On page 10, line 37, the following question was asked A. S. Boyd:

Q. "Do you recollect having a conversation with Dr. Quimby, when Derrickson first sued him, in which you told the doctor that Derrickson had nothing whatever to do with the making of this loan?"

This question was overruled by the Court.

2d. Dr. Quimby was asked (on page 11, line 11), the the following question:

Q. "What did Mr. Boyd tell you about Derrickson's connection with this loan, about the time Derrickson first sued you?"

This question was also overruled by the Court.

This testimony the learned Justice who wrote the opinion in the Supreme Court, thinks is so shadowy that its exclusion or admission was within the discretion of the Court.

But, with all due deference, I think the learned Justice is wrong.

It was very important as showing that Derrickson was not recognized by the party who secured the loan.

It was important to show that the procuring of the loan was not Derrickson's act at all.

S. B. RANSOM,
Of Counsel with the Plaintiff in Error.

New Jersey Court of Errors and Appeals.

Isaac N. Quimby, *Pl'ff in Error,* *vs.* Samuel B. Derrickson, who sues, &c., *Def't in Error.*	*On Writ of Error.*

Brief for Defendant in Error.

The Judge of the District Court in Jersey City, before whom this case was tried, found as matters of fact, that Isaac N. Quimby, the plaintiff in error and defendant below, agreed to pay the defendant in error, Samuel B. Derrickson, a commission of one per cent. on the amount of the loan, if he, Derrickson, would find a party who would loan the defendant, Quimby, $10,000 or $12,000, for *three years or more ;* that Derrickson did find such a party who loaned to Quimby $12,000 for three years or more, and judgment was therefore given for Derrickson for $120 and interest (p. 11).

These being findings of fact upon which the decision of the Judge was based, under the law his determination upon them is final.

Vide District Court Act, sec. 170 and 171, Rev., p. 1330.

Also Benedict *vs.* Howell, 10 Vr., 221.

The only question for consideration then is: Is there any legal objection to the admission or rejection of evidence?

The paper admitted in evidence by the Court, and which the plaintiff in error contends should have been rejected was properly admitted. It was *not a copy*, but the *very application* which Derrickson himself made out, and left at the office of Coudert Brothers, New York, and so the Judge found as a fact, (pages, 4 and 5). Coudert Bros. turned it over to their lawyer in New Jersey, Mr. Boyd, who made searches, contracts, and acted for them in such transactions in New Jersey (test. Derrickson, p. 4, Boyd p. 7, and Coudert, pages 8 and 9). Derrickson was the agent of Quimby, made the application in his own name, describing the property, etc., and it is immaterial whether Quimby signed it or not.

The agreement, authorizing Derrickson to negotiate the loan, and which Derrickson says Quimby signed, was lost. Derrickson on his cross-examination at page 5, explains the loss, and thus Quimby was not prejudiced by the result. Quimby, however, denies that he signed such a paper, but admits at page 9 that he told Derrickson if he could procure him a loan of $10,000 or $12,000 at a reasonable rate he would take it. Thus, Quimby made Derrickson his agent for that purpose, and so the Judge found as a fact (p. 11).

The defendant in error proved by his own testimony (page 4), and by that of Berlew (page 6), that he was authorized by Quimby to procure the loan; that in pursuance thereof, he made the application to Coudert Bros. (test. of Derrickson, page 4, and of Coudert, page 9): that upon *that application* the loan was effected through Boyd, the lawyer of Coudert Bros. (test. of Boyd, p. 7, and of Coudert, p. 9). Upon this state of facts, Derrickson became legally entitled to his commissions.

Shepherd *vs.* Heddin, 5 Dutch., 334.

This was a prima facie case. The Court should not non-suit a party where he makes out a prima facie case.

Plotts *vs.* Roseburry, 4 Dutch., 146.

The questions put by the plaintiff in error, and which he claims were illegally overruled, appear on pages 10 and 11, and were properly overruled. They were not material or relevant; and admitting them to be so, it still did not appear that defendant in error was present when the conversation attempted to be introduced, occurred, and the questions were therefore properly excluded.

The contract sued upon, is neither illegal nor against public policy.

Sec. 5 of the "Act against usury," Rev. p. 519, limits a broker to a charge of 50 cents on $100 *for a year*, and so in proportion for a greater or less sum, or for a longer or shorter time. In terms, therefore, it recognizes the right in the broker to charge *at that rate*, and *a fortiori* at a *less rate*, if he choses.

Under the terms of this section, and in the absence of an express agreement, the defendant in error could legally charge at the rate of one and one half per cent. for three years; that is at the rate of one half of one per cent. for one year, which would be $180, instead of $120, the amount claimed.

But the Judge of the District Court found *as a fact* from the evidence adduced, that the agreement was, that Derrickson should get *one per cent.*, if through his instrumentality a loan of $10,000 or $12,000 would be obtained, not for one year, but *for three years, or more.* Burlew, testifies (page 7), "It was written on the paper (which was lost), that Quimby was to give Derrickson *one per cent.* on the amount of the loan, whichwas to be $10,000 or $12,000 *for three or five years.*

There is no connection, as claimed by plaintiff in error, between sections 1 and 5 of the act against usury; section 1 regulates the rate of interest which a lender shall charge; section 5 imposes a penalty on a broker if he charges at a higher rate than one-half of one per cent. per year for procuring a loan.

This is not a usurious transaction. Mr. Boyd was not the lender, and there is no proof whatever that any part of the ten per cent. which Quimby agreed to pay Boyd, went to the lender. The transaction was this: Derrick-

son applied to Coudert Brothers for this loan; they had a client named Quesada, who would make the loan; they sent their application to their lawyer in New Jersey, Mr. Boyd; he sent for Dr. Quimby, and they agreed upon ten per cent. to cover all expenses (test. of Boyd, pages 7 and 8). The loan was effected. To constitute usury a defence, it must be shown that the usurious excess was received by the mortgagee or his agent (Spring *vs.* Reed, 1 Stew., 345). But there is no proof that Derrickson had anything to do with the agreement between Boyd and Quimby. To the contrary is the evidence. Boyd did not even know Derrickson at that time (test., page 8), nor was Derrickson present at, or cognizant of the making of the agreement. Neither were Boyd and Quimby acquainted up to that time; for Quimby when he heard from Boyd asked Burlew who Boyd was (test. of Quimby, p. 10.

Dr. Quimby denies in his direct-examination on his own behalf (pages 9 and 10), that there was anything on the paper (the application for loan), except a diagram of the property. But in his cross-examination he admits that everything that is on it now was on it then, except the clause at the bottom, and Mr. Boyd testified that the "paper has not been touched since Dr. Quimby signed "his name on the back; everything that is on it now "was on it when Quimby signed his name on the back" (page 18).

The case of Van Doren *vs.* Staats, Penn. 887, cited by counsel for plaintiff in error, on the argument in the Common Pleas does not apply. That was an action for prize money of a lottery ticket. Neither does the case of Gregory *ads.* Wilson, 7 Vr., 315, also cited, apply, because there is not a particle of proof in this case that Derrickson procured a customer for another broker, with the understanding that the latter should charge for the procuring a loan at a rate prohibited by the statute, and that such commissions should be divided. This is not a suit by one broker against another broker for a share of illegal (or even legal) commission.

No motion to nonsuit on the state of demand, was

made at the trial, or in the Common Pleas, nor any objection made to it. If such motion were made, or objection raised, it could have been then amended (District Court Act, sec. 103, Rev. 1318). If necessary, the state of demand may now be amended to conform to the judgment. Hoboken *vs.* Gear, 3 Dutch., 265; Price *vs.* N. J. R. R. Co., 2 Vr., 229; Willis *vs.* Fernald, 4 Vr., 206; Ten Eyck *vs.* Del. & R. Canal Co., 4 Harr., 5; Apgar *vs.* Hiler, 4 Zab., 808. Practice Act, sec. 301.

A claim was set up for the defence, that the date of the "application" had been altered, either from 1873 to 1877, or from 1877 to 1873. Mr. Boyd testified that this paper has been in his possession ever since the transaction (April, 1873). He was subpœnaed to produce it. There is no denial that the transaction took place in 1873; there is no pretence that it took place in 1877. If the date was changed, it was changed in the interest of some person hostile to defendant in error. A moment's consideration will convince us that nothing could possibly be more prejudicial to the case of defendant in error than such a change, allowing that he had it in his power to do so, which does not appear.

There can be no doubt that when Dr. Quimby signed the agreement endorsed on the paper, he saw Derrickson's name on the face of it, and ordinary prudence ought to have prompted him to first ascertain from Derrickson whether he had any claim. Then the whole matter could have been settled, and this litigation avoided.

JAMES F. MINTURN,
Attorney for Defendant in Error.

Davison & Co., Law Printers, 27 Montgomery st., Jersey City.

N. J. Supreme Court.

Isaac N. Quimby,
Pl'ff in Cer.,
vs.
Samuel B. Derrickson, who sues, &c.,
Def't in Cer.

Writ of Certiorari.

E. A. RANSOM, Att'y.

I allow this writ. Let it be sealed.
May 4, 1880.

M. M. KNAPP,
J. S. C.

New Jersey, to wit: The State of New Jersey to the Judges of the Inferior Court of Common Pleas of the County of Hudson, Greeting:

[L. S.]

We being willing for certain reasons to be certified, of a certain plaint and judgment thereon in our Inferior Court of Common Pleas of the County of Hudson, against Isaac N. Quimby, appellant, in favor of Samuel B. Derrickson, appellee, on a certain appeal from the judgment of our (2d) District Court of Jersey City, held before John Garrick, Esquire, Judge of said Court, against the said Isaac N. Quimby, at the suit of the said Samuel B. Derrickson, in a certain action of debt brought and rendered, we command you that the plaint and judgment aforesaid, as fully and entirely with all things touching and concerning the same as it remains before you, by whatever names the said Isaac N.

Quimby and Samuel B. Derrickson may be called in the same, to our Justices of our Supreme Court to be holden at Trenton on the first Tuesday of June next, you certify and send together with this writ, that therein may be done what of right and according to the constitution and laws of this state ought to be done.

Witness MERCER BEASLEY Esquire, Chief Justice at Trenton, aforesaid, this fourth day of April, eighteen hundred and eighty.

BENJ. F. LEE, Clerk.

EDWARD A. RANSOM, Attorney.

The answer of Abram Q. Garretson, Esquire, presiding judge of the Court of Common Pleas, of the County of Hudson:

The record and proceedings, whereof mention is within made, with all things touching the same. I hereby certify to the Supreme Court of Judicature of the State of New Jersey, in a certain Schedule to this writ annexed, as within I am commanded.

Witness my hand and seal.

A. Q. GARRETSON, Judge. [L. S.]

DISTRICT COURT OF JERSEY CITY.

HUDSON COUNTY, ss.

SAMUEL B. DERICKSON, who sues for the use of THOMAS C. LYMAN and HENRY L. GREENMAN.

vs.

ISAAC N. QUIMBY.

In debt.

The plaintiff demands from the defendant one hundred and twenty dollars, and interest thereon, from May 1st, 1873, for the work and labor, care and diligence of the said plaintiff, by him done, performed and bestowed, to wit: at Jersey City, in the said County of Hudson, in the months of March and April, 1873, as the agent of, and at the special instance and request of said defendant, and for certain commission and reward then and there agreed upon, by and between the said defendant and said plaintiff, to be paid by defendant to plaintiff in negotiating for, and aiding and assisting the defendant in procuring a loan of twelve thousand dollars upon mortgage, upon lands of defendant, at the corner of Newark Avenue and Monmouth street, in Jersey City, aforesaid.

And plaintiff says the sum agreed upon to be paid by defendant for the services aforesaid, was at, and after the rate of one per centum on the amount of said loan; that defendant did, through the agency, services and instrumentality of plaintiff, obtain the said loan of Twelve thousand dollars on the mortgage aforesaid. That defendant has not paid the said percentage, to wit: the sum of one hundred and twenty dollars, or any part thereof, although often requested so to do, and plaintiff says that he has instituted this suit for the use of Thomas C. Lyman, and Henry L. Greenman, to whom he, the said plaintiff, has assigned this claim. SAMUEL B. DERICKSON, Plaintiff.

SECOND DISTRICT COURT OF JERSEY CITY.

BEFORE JOHN GARRICK, ESQUIRE, JUDGE.

ISAAC N. QUIMBY,
Defendant,
ads.
SAMUEL B. DERRICKSON, who sues for the use and benefit of T. C. LYMAN & Co.

In Debt.

State of Case.

S. B. RANSOM, and ALBERT CLOKE, for Defendant.

P. H. MCDERMOTT, for Plaintiff.

This cause was tried March 26th, 1879. The plaintiff to prove the case on his part called as a witnes

Adonijah S. Boyd, who being duly sworn, said :

I have paper for a loan on Dr. Quimby's property. This paper was, I suppose, sent to me by Coudert Brothers in 1873. It has been in my possession ever since.

Samuel B. Derrickson, another witness produced on the part of the plaintiff, being sworn, said :

I am the plaintiff in this action. I know Isaac N. Quimby. In March, 1873, I was introduced to Dr. Quimby by Mr. Berlew. Dr. Quimby told me that there was a mortgage of $10,000 on his property. He said he wanted a loan of $12,000 to take it up, or would take $10,000 if he could not get more. He said if I procured the loan, or introduced him to parties who would make the loan, he would give me one per cent. Mr. Berlew was present. I applied to several parties, and among others to Coudert Brothers. This paper, the paper produced by Mr. Boyd, is the application in writing for the loan which I made out and presented to Coudert Brothers. I made it out from an original

signed by Dr. Quimby, which Mr. Berlew gave me. I delivered to Charles Coudert, in Wall street. This is a copy of the original paper; this is in my handwriting. I have never been paid by Dr. Quimby or any one else. He referred me to Mr. Coudert.

This paper was here offered in evidence by the plaintiff.

To the admission of this paper the defendant objected.

1st. Because it is a copy and not an original, and the original is not accounted for.

2d. Because Dr. Quimby does not appear to be in any way connected with this paper.

The Court overruled the objection and admitted the paper as being the application which plaintiff made for the loan.

To this ruling of the Court the defendant objected.

The witness further testified as follows:

I called on Dr. Quimby and told him I had made application to several parties, and he would hear from them if they would make the loan.

And being *cross-examined*, witness said:

The paper I call an original I got from Mr. Berlew; I carried it in my pocket six months; I think it was an exact copy. That bottom clause on first page of paper was not in the original I got from Mr. Berlew; I put that clause in the copy. The part on the back of the paper was not there when I left it with Coudert. The original had in it a clause: "I hereby authorize S. B. Derrickson to negotiate this loan," and was signed by Dr. Quimby; I did not put that in the copy because I did not want to sign Dr. Quimby's name; I had to make several copies; I lost the original; it was in my coat pocket, and my coat was stolen by a colored man. I did not see Dr. Quimby sign it; it was at Dr. Quimby's house that Berlew introduced me to Dr. Quimby; I can't fix the date; it was two or three weeks after that that I got the paper, signed by Dr. Quimby; I applied to a broker in Pine street,

named Pierce, and others; I did not call on the Doctor and tell him that I had got the money, and that he would have to pay twelve per cent. for it. A few days after the loan was made I called on Quimby for my pay.

Being again *re-examined-in-chief*, he said:

When I called on Quimby he told me he had obtained the loan for $12,000, and that he paid Coudert my brokerage fees, and that I must call on him. I did so, and Coudert told me he had nothing to do with me.

Alexander F. Berlew, being duly sworn on the part of the plaintiff, said:

In March, 1873, I lived in Jersey City; I had a real estate office at No. 135 Newark avenue; I knew Dr. Quimby and Samuel B. Derrickson; I was collecting rents for Dr. Quimby; Quimby had a mortgage that was due, and he wanted me to get a loan; I was Quimby's agent then, for this property; I collected the rents; it is on the corner of Second and Monmouth streets; the mortgage was for $10,000, and was held by Abraham Collard. He wanted $12,000 to pay that off, and to improve the property; he signed a contract in my office; I brought Derrickson to Quimby's office; Dr. Quimby said that he wanted $12,000, or $10,000 at least; Quimby said he would give Derrickson one per cent; he wanted Derrickson to get the money as cheap as he could; Derrickson told him he might have to pay a bonus; there was some talk that he would have to pay some five or six per cent for the money; a couple of weeks after that, I drew out the agreement, and Quimby signed it in my presence, and I signed it as a witness.

Being shown paper heretofore admitted in evidence, said; I never saw this before; the agreement which I drew, contained a description of the property, like this, with the amount of the loan, $12,000. There was also

on it a diagram of the property ; Dr. Quimby's name was signed to the paper ; it was written on the paper, that Quimby was to give to Derrickson one per cent. on the amount of the loan, which was to be $10,000 to $12,000, for three or five years. After that, Dr. Quimby told me that he received a letter from a man named Boyd in Hoboken, and asked me to go over with him. Dr. Quimby told me afterwards that he had settled with Boyd for the commission, and that Derrickson must go to him. He told me he had got the loan.

And being *cross-examined*, said :

Dr. Quimby promised the commissions if I got the loan. I don't expect any commissions from Quimby. If Derrickson had got the commissions, he might have paid me something. I understood the one per cent. to be commissions for bringing the parties together. Derrickson told me about six weeks after I drew the agreement, that he had procured the loan from a Spanish house in Wall street, but didn't tell me the terms.

The language of that paper was, as near as I can recollect, " I authorize so and so to procure a loan of $12,000 for me, for which I agree to pay him one per cent."

Adonijah S. Boyd recalled for the plaintiff, said :

I am an attorney at law, and do business for Coudert Brothers. I received this paper in April, 1873. I think from Coudert Brothers. I wrote a letter to Quimby ; he called at my office and I drew this agreement on the bottom of the paper, and Dr. Quimby signed it. I made the searches and the loan of $12,000.

The following question was asked the witness, viz.:

Q. For whom were you acting at that time in this matter ?

(This question objected to by the defendant, as the written contract shows that the loan was to be made by Mr. Boyd.)

The objection was overruled by the Court and the witness allowed to answer the question.

To this ruling of the Court the defendant excepted.

The witness answered :

A. I represented through Coudert Brothers a Mr. Quevada.

I gave Mr. Collard a check for $10,000, and Collard assigned the mortgage to Quevada. There was an agreement that the mortgage should be executed for three years. There was another loan of $2000 to Dr. Quimby ; I am not sure but that it was on another property. I think that mortgage was to S. S. Coudert. It was all done about the same time. I knew nothing about Derrickson except seeing his name on the paper.

(The check of A. S. Boyd to Abraham Collard for $10,000 is offered in evidence.)

And being *cross-examined*, witness said :

I don't recollect how the other $2000 was paid. The ten per cent. was paid out of the $2000 ; I don't remember how the $800 was paid to Dr. Quimby. I presume the agreement to extend was written on the bond, but don't remember distinctly.

Charles Coudert, Jr., another witness produced and sworn on the part of the plaintiff, said :

I reside in New York ; I am a lawyer.

Being shown paper heretofore offered in evidence, said :

I have no recollection of this paper ; I have no recollection of sending it to Mr. Boyd in 1873 ; I remember making a loan to Dr. Quimby for Mr. Quevada, of $10,000, four, five or six years ago ; I have no recollection of Dr. Quimby giving a mortgage of $2,000 to my brother.

I don't think I had ever seen Dr. Quimby before this loan was made ; I may have seen Mr. Derrickson ; Mr. Boyd made the searches, &c., and contracts, and acted for us in reference to loans in New Jersey.

And being *cross-examined* said:

Mr. Boyd always reported to me before negotiating a loan; I have an indistinct recollection of a conversation with Boyd about Derrickson.

And being again *examined-in-chief*, witness said:

I presume that I must have received this application and referred it to Mr. Boyd; I must have received this very paper and sent it to Mr. Boyd, but have no distinct recollection of it.

The plaintiff offered in evidence an assignment of his claim to T. C. Lyman & Co., proof of execution waived.

Admission of paper objected to by defendant, but admitted by the Court.

(The plaintiff rested.)

The defendant moved to non-suit the plaintiff on the ground that the evidence offered by the plaintiff failed to make out a legal cause of action against the defendant.

Which motion was denied by the Court.

To this opinion of the Court, the defendant excepted.

Isaac N. Quimby, being duly sworn on his own behalf said:

I am the defendant; in the spring of 1873 Mr. Berlew, my agent, told me he had some money to loan; I told him I wanted a loan for a little more than enough to pay off the mortgage on my property After that, Berlew brought Derrickson to my office; I said: Derrickson, if you can get me $10,000 or $12,000 I will take it at a reasonable rate; that was all that was said. A week or two afterwards, Derrickson told me he had a party who would loan the money for twelve per cent.; I declined to pay that rate; he never informed me that he had applied to Coudert for a loan of $12,000; I think he said he had the money from some party in Pine street; I never signed any paper authorizing Derrickson to procure a loan for me; I

signed a paper in Mr. Berlew's office; Derrickson's name was not on it. The first time, Derrickson told me it would cost about eight per cent.; I never agreed to give him one per cent.

This paper I signed had no name on the face of it when I signed it; there was nothing on it but a diagram of the property; I did not know from whom Boyd was to get the money.

And being *cross-examined*, witness said:

The description of the property, the diagram, and all the rest was there, except the clause at the bottom, on this paper, when I signed the agreement on the back.

I think I called on Berlew and asked him who Boyd was; I never knew Boyd before; I think I told Berlew that I would give him $75 if he would get the loan within a certain time; Boyd had that paper when he came to my house; I think it was all made out there, but am not positive; I think the Collard mortgage was not assigned, and that a new mortgage was made, but am not positive.

I read this paper, or its face, before I signed it on the back; I am positive that Derrickson's name was not on it.

The defendant having rested his evidence,

Adonijah S. Boyd was recalled on behalf of the plaintiff, and testified as follows:

This paper has not been touched since Dr. Quimby signed his name on the back; everything that was on it now, was on it when Quimby signed his name on the back.

The following question was asked the witness.

Q. Do you recollect having a conversation with Dr. Quimby when Derrickson first sued him, in which you told the doctor that Derrickson had nothing whatever to do with the making of this loan?

(The question was objected to by the plaintiff, and disallowed by the Court.)

To this ruling of the Court, the defendant excepted.

The witness further said :

I did not call Dr. Quimby's attention to Derrickson's name on the paper ; I think his name was there then, and I noticed it.

Isaac N. Quimby, recalled on his own behalf, and asked :

Q. What did Mr. Boyd tell you about Derrickson's connection with this loan, about the time Derrickson first sued you ?

(Question objected to, and over-ruled by the Court.)

To this ruling defenpant excepted.

CONCLUSIONS OF THE COURT.

1. There is no proof of usury ; the ten per cent. was paid to Boyd. There is no proof that any part was paid to the lender. Nor is there any proof that the contract between Quimby and Derrickson was to procure a usurious loan.

2. The Court finds that defendant agreed to pay plaintiff a commission of one per cent. on the amount of the loan, if plaintiff would find a party who would lend the defendant $10,000, or $12,000, for three years or more ; that the plaintiff did find such a party, who loaned to defendant $12,000 for three years or more, and that plaintiff is entitled to his commission of one per cent. on $12,000, which is $120.

The interest thereon, from May 1, 1873, is $48.60.

Judgment for plaintiff, $168.60.

The above state of the case is agreed to by the parties.

S. B. RANSOM,
Att'y of Defendant.

P. H. McDERMOTT.
Att'y for Appelee.

HUDSON COMMON PLEAS.

ISAAC N. QUIMBY, Appellant. vs. SAMUEL B. DERRICKSON, who sues for the use of THOMAS C. LYMAN, et al. Appellee.	In Debt, on Appeal, from Second District Court of Jersey City. John Garrick, Esquire, Judge.

This cause being regularly on the list of appeals at the term of September, A. D. 1878, of this Court, and being called for argument on a state of the case only, agreed upon between counsel for the respective parties, and the Court having heard the argument of counsel of the respective parties, and having considered the same, it is, on this nineteenth day of April, A. D. 1880, ordered that judgment be entered in the said District Court in favor of the plaintiff, appellee in this Court, and against the defendant appellant in this Court, for the sum of one hundred and sixty-eight dollars and sixty cents, with interest from March 20, A. D. 1879, to be added, and costs.

By the Court.

A. Q. GARRETSON, P. J.

HUDSON COMMON PLEAS.

ISAAC N. QUIMBY, Appellant. vs. SAMUEL B. DERRICKSON, who sues for the use of THOMAS C. LYMAN, et als. Apellee.	On Appeal, from the Second District Court of Jersey City.

The appelant having presented to the Court a writ of Certiorari for the removal of the above stated cause into the Supreme Court, duly attested by Honorable Manning M. Knapp, a Justice of the Supreme Court. It is ordered that the clerk of this court make return to the said writ by annexing thereto a copy of all the papers on file in his office, in said cause.

Entered, May 5, 1880.

On motion of
E. A. RANSOM,
Att'y of Appellant.

Ordered entered by Judge Garretson.
May 5, 1880.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. }

I, H. K. Van Horn, Clerk of the County of Hudson, and also Clerk of the Court of Common Pleas holden therein, do hereby certify that the foregoing is a true and correct copy of the proceedings in the case of Isaac N. Quimby vs. Samuel B. Derrickson, who sues, &c., as the same are on file in my office.

In witness whereof, I have hereunto set my hand, and [L. S.] affixed the seal of said court and county, this twenty-eighth day of May, A. D. 1880.

H. K. VAN HORN,
Clerk.

SUPREME COURT OF NEW JERSEY.

ISAAC N. QUIMBY, Plaintiff in Cert. vs. SAMUEL B. DERRICKSON, who sues for the use of THOMAS C. LYMAN, et al. Def't in Cert.	On Certiorari to Hudson Common Pleas. Reasons.

The plaintiff in Certiorari, by Edward A. Ransom, his attorney, comes and insists that the judgment of the said Court of Common Pleas, and of the said District Court, rendered against the said plaintiff in certiorari, in the above stated cause, ought to be reversed, set aside, and for nothing holden, for the following reasons, viz.:

First. Because the Judge of the Second District Court of Jersey City, before whom the cause was tried, admitted illegal evidence offered by the defendant in certiorari, which ruling of the said Judge was affirmed by the said Court of Common Pleas.

Seeond. Because the said Judge of the said District Court, on the said trial overruled and rejected legal evidence offered by the plaintiff in Certiorari, which ruling of the said Judge was affirmed by the said Court of Common Pleas.

Third. Because the evidence offered by the defendant in certiorari, on the trial of the said cause, was not sufficient in law to entitle the defendant in certiorari, who was the plaintiff below, to recover, and the said defendant ought to have been non-suited, which the District Court in which the cause was tried, and the said Court of Common Pleas both refused to do.

Fourth. Because the said judgment of the said District Court and of the said Court of Common Pleas are both against law.

Fifth. Because the said judgment of the said District Court and of the said Court of Common Pleas, are both against the evidence.

Sixth. Because the contract on which the said action is founded is illegal, and against public policy, and absolutely void.

Sevtneh. Because the said judgment of the said Court of Common Pleas appears to be given for the defendant in certiorari against the plaintiff in certiorari; whereas by the law of the land the said judgment ought to have been given for the said plaintiff in certiorari, against the said defendant in certiorari.

Eighth. Because the said judgment is in divers other respects erroneous and contrary to law.

E. A. RANSOM,
Att'y of Plff. in Certiorari.

PLAINTIFF'S EXHIBIT A.

Application for Loan.

[COPY.]

JERSEY CITY, MARCH 31st, 1877.

The undersigned desires to procure a loan of $12,000, at 7 per cent. interest per annum, on property for 3 years, on mortgage secured by the bond of Dr. I. N. Quimby, on the property described as follows:

Location—Newark avenue and Monmouth street, Jersey City.

Dimensions of Ground—100 feet on Newark avenue, & 75 ft. on Monmouth st.

Dimensions of Building—5 buildings, each 20x28.

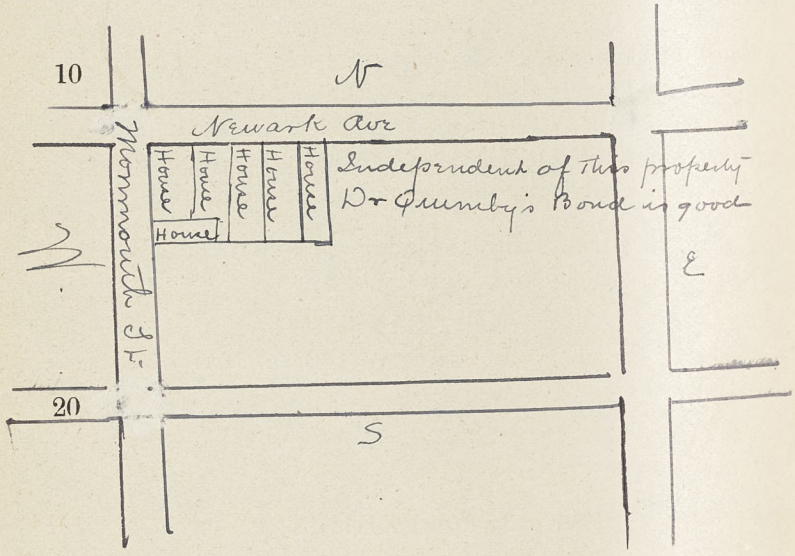
Building Materials—Frame, with brick basements.

Purposes of Use—Dwellings.

Value of Ground—$25,000.

Value of Building—$10,000.
Annual Rent—$1,800.
Insured for $6,000.

Name, DR. I. N. QUIMBY,
Address, No. 180 Jersey avenue, Jersey City.



S. B. Derrickson, 127 West St. New York, is authorized to negotiate this loan to procure for me the above Loan, on obtaining which I agree to pay him a commission of per cent.

I hereby agree to take from A. S. Boyd a loan upon bond and mortgage upon the within described property for $12,000, twelve thousand dollars, and agree to pay for the same 10 per cent., which will cover all expenses.

Bond and Mortgage to run for three years.

This is to cover all expenses.

I. N. QUIMBY.

OPINION.

NEW JERSEY SUPREME COURT,
June Term.

SAMUEL DERRICKSON,

v.

ISAAC N. QUINBY.

Where a person desiring a loan makes an application in writing, upon which is an endorsement authorizi ng siugle broker to procure the loan, and the broker leavesa copies of such application with a number of persons, one of whom, induced by such application, without the brokers knowledge, lends the money, the broker is entitled to his commissions.

This writ brings up a judgment of the Court of Common Pleas of Hudson County, affirming a judgment rendered in the above entitled cause, in favor of Derrickson, the plaintiff.

Argued at November Term, 1880, before Justices DIXON, PARKER and REED.

For Prosecutor—S. B. RANSOM.

For Defendants— ——— ———

The opinion of the Court was delivered by Reed, J. This action is brought by plaintiff, to recover commissions which he alleges he earned by bringing together the defendant Quimby and a person from whom Quimby borrowed the snm of $12,000.

The facts disclosed by the evidence which comes up as a state of the case discloscs substantially the following case: Derrickson was introduced to Quimby, the de-

fendant in March 1873. Quimby told Derrickson, according to the testimony of the latter, that he wished to borrow ten or twelve thousand dollars, and if he (Derrickson) would introduce Quimby to parties who would make the loan, or if Derrickson would procure the loan he should have one per cent.

That Quimby signed a written application for a loan, upon which was a description of the property, and in addition thereto a written authorization to Derrickson to negotiate the loan, and this paper he delivered to Derickson. Derickson made copies of this paper leaving them with persons whom he thought to be likely to make loans, among whom were Coudert Bros., on Wall street, New York City. In April 1872 Couderrt Bros. delivered the copy of the application to Mr. Boyd, who was their agent, to make loans in New Jersey, and Mr. Boyd wrote to Mr. Quimby about the loan. In response to this note Mr. Quimby called at Boyd's office and entered into an agreement written on the back of the application by which he agreed to take from Boyd the sum of $2,000.

Mr. Quimby desired this loan to pay off a ten thousand dollar mortgage already upon the property held by a Mr. Collard and for some other purposes. Mr. Boyd gave his check to Collard for $10,000 and took an assignment of that mortgage. The assignment was made to one Quevada for whom Coudert Bros. through Boyd were acting in making the loan. Quimby was to pay 10 per cent. for the loan, and this was taken out of the remaining $2,000. How the balance was paid or how secured does not appear, nor does it appear who received finally the ten per cent. This presents the case of the plaintiff as it is found in various parts of the testimony of his witnesses.

The defendant in his testimony denies the accuracy of the plaintiff's account of the agreement and states an

agreement which defeats, if true, the plaintiff's right of action. We of course cannot weigh the testimony, but only decide upon a case which the court below could have deduced from any legal view of its force. The reasons upon which the prosecutors rely for reversal are, first, that no case was proven, and because the employment if made was to procure a usurious loan and was void, and, second, that competeut testimony was excluded and incompetent admitted.

First, I think that from the evidence offered it was competent for the court to draw a conclusion that Quimby should respond. The case is not similar to that of Vreeland v. Veterlein, 4 Vroom, 247, where a property was placed for sale openly in the hands of saveral brokers, and the sale was made by one although the purchaser had first received overtures from another of the brokers, and the court held that the first was the only one entitled to commissions Here the application for the loan was made through the plaintiff alone. He distributed copies of the application in those quarters where he thought a lender might be. Coudert Bros. lending money for a principal received one of them.

This was by them placed in the hands of Boyd, who was their agent to make loans in New Jersey. He sought an interview with the defendant, having the application upon which (as to which there was some proof) was a copy of the authorization by Quimby to Derrickson to negotiate the loan. The production of the application with this authorization upon it would have warned Quimby at once that Derrickson was in some way concerned as the cause of Boyd's action. I think that under such circumstances the fact that Coudert Bros., through their agent Boyd, directly negotiated the loan, could not deprive the plaintiff of his commission.

Shepperd v. Heddin, 5 Dutch, 334.

Nor upon the other point, viz: that the agreement between the parties was to negotiate a usurious loan, do I think the judgment revisable. The loan was undoubtedly usurious. The evidence is very strongly in the direction that at the time of agreement between Derrickson and Quimby it was understood that the loan must be usurious or else it could not be made. But taking the testimony of the plaintiff as true, the Court had sufficient to draw its conclusion that the contract was not for a usurious loan, and the weight of testimony is entirely for the Court below.

As to the second ground, that the Court excluded competent testimony, it appears that a question to Boyd in cross-examinstion was excluded. He was asked whether he had ever told Dr. Quimby that Derrickson had nothing whatever to do with the making of the loan. The question was only permissible to break in some particulars the force of Boyd's testimony in chief. But if it could have hsd such an effect at all it would have been so shadowy that its exclusion or admission was within the discretion of the Court.

Judgment affirmed with costs.

A true copy.

BENJ. T. LEE,

Clerk.

The judgment below was affirmed in the Supreme Court, July 26th, 1881.

NEW JERSEY COURT OF ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CASES.

ISAAC N. QUIMBY, Plaintiff in Error, *vs.* SAMUEL B. DICKINSON, who sues for the use of Thomas C. Lyman, *et al.*, Defendant in Error.	Assignment of Errors.

Afterwards, that is to say, on the 23d day of August in the year of our Lord one thousand eight hundred and eighty-one, before the Court of Errors and Appeals in the last resort in all causes, at Trenton, comes the said Isaac N. Quimby, by Stephen B. Ransom, his attorney and says that in the record and proceedings aforesaid and in giving and affirming the judgment aforesaid, there is manifest error in this, that the statement of demand and the matters therein contained are not sufficient in law for the said Samuel B. Derrickson to have and maintain his aforesaid action against him in the said Isaac V. Quimby. And also there, is error in this, to wit, that on the trial of the said cause in the Second District Court of Jersey City, the said Court admitted illegal evidence offered by the said Samuel B. Derrickson, which was objected to by the said Isaac V. Quimby, which ruling of the said District Court was affirmed by the said Court of Common Pleas of the County of Hudson and the Supreme Court; therefore in that there is manifest error. And also there is error in this, to wit: that on the trial of the said cause before the said Dis

taict of Jersey City the said Court overruled and rejected legal evidence offered by the said Isaac V. Quimby, which ruling of the said District Court was affirmed by the Court of Common Pleas of the County of Hudson and the Supreme Court; therefore in that there is manifest error. And also there is error in this, to wit: that on the trial of the said cause before the said District Court of Jersey City the evidence prodnced by the said Samuel B. Derrickson was not sufficient in law to entitle the said Samuel B. Derrickson to recover, and by the law of the land he ought to have been non-suited; yet the said District Court refused to non-suit him, which ruling of the said District Court was affirmed by the said Court of Common Pleas and Supreme Court; therefore in that there is manifest error. And also there is error in this, to wit, that the contract on which the said action is founded as set forth in the state of demand of the said Samuel B. Derrickson, and proved on the trial of this cause in the said District Court of Jersey City is illegal, against public policy and void, and ought to have been so heclared. Yet the said District Court of Jersey City, the Court of Common Pleas of the County of Hudson, and the Supreme, all refused so to declare; therefore in that there is manifest error. And also there is error in this, to wit, that the judgment aforesaid of the Second District Court of Jersey City, by the record aforesaid, appears to have been given for the said Samuel B. Derrickson against the said the said Isaac N. Quimby; whereas by the law of the land the said judgment ought to have been given for the said Isaac N. Quimby against the said Samuel B. Derrickson; therefore in that there is manifest error. And also there is error in this, to wit: that the judgment aforesaid was affirmed in the Supreme Court of Judicature of the State of New Jersey; whereas by the law of the land the said judgment ought to have been reversed, therefore in that there is manifest error, and the said Isaac N. Quimby prays that the judgment and affirmance thereof aforesaid, for the errors aforesaid, and for other errors in the

said record and proceedings being, may be reversed, annulled and altogether holden for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment and the said affirmance thereof, &c.

S. B. RANSOM,

Atty. of Pltff. in Error.

Defendant in error has filed the common joinder in Error.