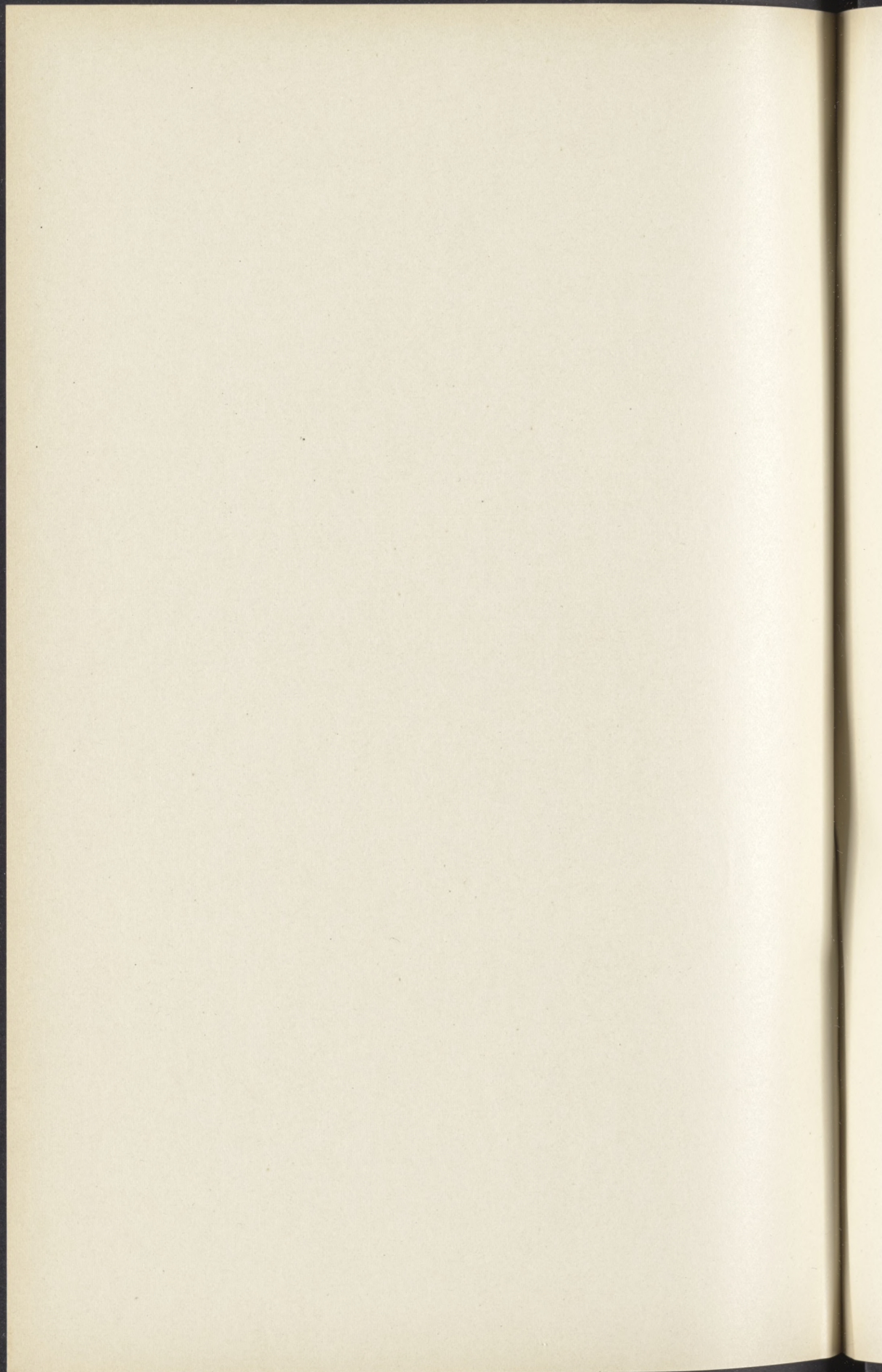


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Notice of Appeal and Grounds.

(Filed March 19, 1929.)

NEW JERSEY SUPREME COURT,

10

PASSAIC COUNTY.

MERLE M. GEDDIS, Plaintiff, vs. WESTSIDE NATIONAL BANK OF WEST PATERSON, NEW JER- SEY, Defendant.	}	Action at Law.	20
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To:

Hart & Vanderwart, Esqs.,
Attorneys for Plaintiff.

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Please Take Notice that the defendant appeals to the Court of Errors and Appeals of New Jersey, from the judgment entered in this cause in favor of the plaintiff and against the defendant, and herewith assigns the following as grounds of appeal:

1. The learned Commissioner erred in ruling that the agreement pleaded in the special defense was void and illegal in that the same was contrary to public policy. 40

Notice of Appeal and Grounds

2. The learned Commissioner erred in ruling that the plaintiff was not estopped by his conduct in the premises from setting up the invalidity, if any, in the said agreement.

10 3. The learned Commissioner erred in failing to take into consideration the fact that the salary of the plaintiff, as fixed in the original agreement and in the renewal thereof, was far in excess of the Notarial fees claimed.

Dated, March 12th, 1929.

Respectfully yours,

DAVID S. HERMAN,

Attorney for and of Counsel
with Defendant.

20

Service of a copy of the within notice of appeal and grounds is hereby acknowledged this 14th day of March, 1929.

HART & VANDERWART,
Attorneys for Plaintiff.

30

40

Supplemental Ground of Appeal.

(Filed March 19, 1929.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">MERLE M. GEDDIS, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">WESTSIDE NATIONAL BANK OF WEST PATERSON, N. J., Defendant.</p>	}	<p>10</p> <p>Action at Law.</p>
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4. The learned Commissioner erred in failing to rule that a Notary Public has a right to waive Notarial fees prescribed by statute. 20

DAVID S. HERMAN,
Attorney for Defendant.

Service of a copy of the within Supplemental Ground of Appeal is hereby acknowledged this 16th day of March, 1929. 30

HART & VANDERWART,
Attorneys for Plaintiff.

Docket Entries.

NEW JERSEY SUPREME COURT.

10	MERLE M. GEDDIS vs. WESTSIDE NATIONAL BANK OF WEST PATERSON, N. J.	}	Copy of Docket Entries. Hart & Vanderwart, Attys.
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1927, Nov. 16, Sum. & Com. Passaic Served
 Nov. 18, Fees \$5.00.

1927, Dec. 15 Answer.

1928, July 6, Ck. for Costs. Sept. 28, Reply.

20 1929, Feb. 16, On Motion to strike out An-
 swer.

1929, Feb. 23, Order striking our Answer, p.
 A true copy.

FRED L. BLOODGOOD,
 Clerk.

30

Summons.

The State of New Jersey
 to
 (L. S.) Westside National Bank of West
 Paterson, New Jersey

You are summoned to answer the annexed
 complaint of Merle M. Geddis, in an action at
 law in the New Jersey Supreme Court.

40 And Take Notice, that unless you file your an-
 swer to said complaint with the Clerk of the

Complaint

Supreme Court, at Trenton, within twenty days after service upon you of this Writ, and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 16th day of November, A. D. 1927. 10

EDWARD J. KELLEHER,
Clerk.

Hart & Vanderwart,
Attorneys.

Complaint.

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NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

<p>MERLE M. GEDDIS, Plaintiff, vs. WESTSIDE NATIONAL BANK OF WEST PATERSON, NEW JER- SEY, Defendant.</p>	}	<p>Action at Law.</p>	30
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Plaintiff, residing at 354 Main Street, Little Falls, Passaic County, New Jersey, says that:

1. On October 15, 1925, plaintiff was acting as a Notary Public of the State of New Jersey, his commission having been issued on October 40

Complaint

6, 1925, and at the same time he was employed as cashier of the defendant.

10 2. In his position as a Notary Public of the State of New Jersey he acted as the subscribing Notary Public upon notices of protest in connection with all negotiable instruments in the course of the business of the defendant, and as such he became entitled to the Notarial fees fixed by statute of the State of New Jersey in connection with the protesting of negotiable instruments.

20 3. Plaintiff acted as Notary Public from the time of his employment with the defendant, October 15, 1925, until September 24, 1927, and over that period of time he became entitled to Notarial fees, as set forth in the accompanying schedule, all of which were received by the defendant and were never accounted for nor paid to this plaintiff.

30 4. Plaintiff demands of the defendant the sum of Six hundred fifty-six (\$656.00) Dollars as damages, together with legal interest and costs of suit.

HART & VANDERWART,
Attorneys of Plaintiff.

Complaint

Notes, Drafts, Checks, Bills of Exchange and Other Instruments Protested by Merle M. Geddis, Notary Public, State of New Jersey, for the Westside National Bank of West Paterson, West Paterson, New Jersey, During the Period From November 21, 1925 to September 24, 1927, Inclusive.

Date of Paper	Character of Paper	Name Maker or Drawer	Amount	Fees
11/21/25	Note	Wm. Admerand	\$600.00	\$2.00
12/29/25	Check	Henry Gooter	11.86	2.00
12/31/25	Check	Henry Gooter	75.00	2.00
1/11/26	Check	Fred Kinnaird	100.00	2.00
1/12/26	Check	Fred Kinnaird	100.00	2.00
1/12/26	Check	Fred Kinnaird	100.00	2.00
1/25/26	Check	Henry Gooter	17.00	2.00
1/25/26	Note	Joseph Weir	175.00	2.00
1/29/26	Check	J. E. Crandall	50.00	2.00
1/11/26	Tr. Accept	Elin Auto Supply Co.	500.00	2.00
2/10/26	Check	J. E. Crandall	200.00	2.00
2/ 9/26	Check	J. E. Crandall	20.00	2.00
2/13/26	Check	J. E. Crandall	31.00	2.00
2/ 8/26	Check	John C. Kelly	20.00	2.00
2/18/26	Check	Henry Gooter, Atty.	12.00	2.00
2/18/26	Check	Henry Gooter, Atty.	100.00	2.00
2/18/26	Check	Henry Gooter, Atty.	40.00	2.00
2/23/26	Check	Henry Gooter, Atty.	15.00	2.00
2/12/26	Check	Henry Gooter	102.50	2.00
2/20/26	Check	Joseph Nestico	40.50	2.00
2/20/26	Check	J. E. Crandall	35.00	2.00
2/23/26	Check	J. E. Crandall	50.00	2.00

Complaint

1/29/26	Check	J. E. Crandall	25.00	2.00
2/23/26	Check	Morris Zakim	24.32	2.00
2/25/26	Check	Helen Gooter	25.00	2.00
1/ 6/26	Tr. Accept	Elin Auto Supply Co. (Smith Auto Supply Co.) (Drawee)	233.91	2.00
2/25/26	Check	J. E. Crandall	105.00	2.00
2/23/26	Check	J. E. Crandall	15.00	2.00
2/20/26	Check	J. E. Crandall	12.00	2.00
1/27/26	Note	J. E. Crandall	200.00	2.00
2/26/26	Check	J. E. Crandall	25.00	2.00
2/26/26	Check	Helen Gooter per Henry Gooter, Atty.	175.00	2.00
2/27/26	Check	F. J. Koehler & Co.	50.00	2.00
2/27/26	Check	Fred Kinnaird	15.00	2.00
12/30/25	Note	E. A. Stanley	149.74	2.00
2/27/26	Check	J. E. Crandall	35.00	2.00
2/27/26	Check	Donald T. Smith	35.00	2.00
3/ 2/26	Check	Fred Kinnaird	100.00	2.00
3/ 1/26	Check	Helen Gooter Henry Gooter, Atty.	150.00	2.00
2/27/26	Check	J. E. Crandall	20.00	2.00
3/ 3/26	Check	Fred Kinnaird	100.00	2.00
3/ 5/26	Check	Fred Kinnaird	400.00	2.00
3/ 4/26	Check	Fred Kinnaird	100.00	2.00
2/27/26	Check	J. E. Crandall	14.10	2.00
2/27/26	Check	J. E. Crandall	14.10	2.00
11/ 2/25	Check	Fred Kinnaird	200.00	2.00
2/ 9/26	Note	Sullivan Rose	75.00	2.00
3/10/26	Check	J. E. Crandall	100.00	2.00
3/11/26	Check	Henry Gooter, Atty.	30.00	2.00
3/11/26	Check	Helen Gooter Henry Gooter, Atty.	96.94	2.00
2/26/26	Check	Helen Gooter	20.00	2.00
2/15/26	Note	Charles Lloyd	106.87	2.00

Complaint

3/16/26	Check	Henry Gooter	100.00	2.00
3/18/26	Check	Helen Gooter, Henry Gooter, Atty.	75.00	2.00
3/ 6/26	Check	Henry Gooter	60.00	2.00
3/16/26	Check	Helen Gooter, Henry Gooter, Atty.	20.00	2.00
3/17/26	Check	Henry Gooter, Atty. for Helen Gooter	25.00	2.00
3/19/26	Check	Semson Silk Co	100.00	2.00
3/24/26	Check	Helen Gooter, Henry Gooter, Atty.	40.00	2.00
3/22/26	Check	Helen Gooter, Henry Gooter, Atty.	109.00	2.00
3/24/26	Check	Helen Gooter, Henry Gooter, Atty.	65.00	2.00
3/26/26	Check	John C. Kelly	20.00	2.00
3/26/26	Check	Helen Gooter, Henry Gooter, Atty.	15.00	2.00
3/29/26	Check	Marie Pascale	75.00	2.00
3/ 1/26	Note	Joseph Weir	125.00	2.00
3/29/26	Check	Helen Gooter, Henry Gooter, Atty.	105.44	2.00
3/26/26	Check	Helen Gooter, Henry Gooter, Atty.	25.00	2.00
4/ 1/26	Check	Helen Gooter, Henry Gooter, Atty.	30.00	2.00
3/24/26	Check	Helen Gooter, Henry Gooter, Atty.	100.00	2.00
4/ 3/26	Check	Smith Auto Supply Co	200.00	2.00
2/ 9/26	Note	John Herbert	250.00	2.00
4/10/26	Check	J. E. Crandall	75.00	2.00
4/12/26	Check	Jos. V. Pearlstein	500.00	2.00
3/15/26	Note	Donald T. Smith	200.00	2.00
4/14/26	Check	J. E. Crandall	25.00	2.00

Complaint

4/16/26	Check	J. E. Crandall	25.00	2.00
4/14/26	Check	Gotthard Zurcher	150.00	2.00
4/15/26	Check	Jos. V. Pearlstein	921.33	2.00
4/ 6/26	Check	J. E. Crandall	30.00	2.00
4/16/26	Check	J. E. Crandall	25.00	2.00
4/21/26	Check	Jos. V. Pearlstein	182.97	2.00
4/21/26	Check	Jos. V. Pearlstein	478.50	2.00
4/23/26	Check	G. A. Foehl	95.00	2.00
3/25/26	Note	Vigorito Bros Furniture Co	500.00	2.00
4/23/26	Check	G. A. Foehl	25.00	2.00
4/23/26	Check	Murray Koch	361.00	2.00
4/17/26	Check	G. A. Foehl	250.00	2.00
4/24/26	Check	Jos. V. Pearlstein	400.00	2.00
4/28/26	Check	J. E. Crandall	87.00	2.00
4/23/26	Check	G. A. Foehl	35.00	2.00
4/30/26	Check	J. E. Crandall	168.45	2.00
5/ 7/26	Check	Murray Koch	50.00	2.00
5 /8/26	Check	J. Y. Daugherty	135.00	2.00
4/29/26	Check	Murray Koch	50.00	2.00
5/10/26	Check	F. J. Koehler	130.78	2.00
5/10/26	Check	Cal-Jones, Inc	1,534.81	2.00
5/12/26	Check	Edw. Richardson	11.85	2.00
5/13/26	Check	Murray Koch	100.00	2.00
5/10/26	Check	F. J. Koehler	130.78	2.00
2/19/26	Note	Battista) Providenza) Crusco	500.00	2.00
2/23/26	Note	Battista) Providenza) Crusco	100.00	2.00
4/27/26	Check	J. E. Crandall	141.25	2.00
5/20/26	Check	J. E. Crandall	51.00	2.00
6/ 2/26	Check	J. E. Crandall	73.19	2.00
5/25/26	Check	Edw. Richardson	12.00	2.00
5/ 5/26	Note	Mary Turi	75.00	2.00
6/ 1/26	Check	Thos. McKiernan	22.00	2.00

Complaint

3/31/26	Note	Paterson-Ridgewood- Westwood Transp. Co	930.00	2.00
6/ 4/26	Check	F. J. Koehler	116.88	2.00
6/11/26	Check	F. J. Koehler	116.89	2.00
3/17/26	Note	Edw. Caroccolo	673.00	2.00
5/19/26	Note	Michelina) Pietro) Cofrancesco	350.00	2.00
5/ 6/26	Note	Sylvian Silk Co	183.21	2.00
6/19/26	Check	J. Y. Daugherty	15.00	2.00
6/17/26	Check	J. Y. Daugherty	18.60	2.00
6/24/26	Check	J. E. Crandall	20.00	2.00
6/26/26	Check	J. E. Crandall	36.14	2.00
6/28/26	Check	J. E. Crandall	50.00	2.00
6/ 4/26	Check	J. E. Crandall	47.00	2.00
7/ 3/26	Check	J. E. Crandall	203.25	2.00
7/ 2/26	Check	J. Y. Daugherty	63.70	2.00
6/ 7/26	Note	J. E. Crandall	300.00	2.00
7/ 7/26	Check	Donald T. Smith	25.00	2.00
7/ 7/26	Check	P. Bernard	12.00	2.00
7/ 7/26	Check	J. E. Crandall	77.00	2.00
7/10/26	Check	J. E. Crandall	171.03	2.00
7/ 1/26	Note	J. Y. Daugherty	500.00	2.00
7/13/26	Check	Otto Arrienta	364.41	2.00
7/14/26	Check	F. J. Koehler	50.00	2.00
6/18/26	Note	Pietro) Michelina) Cofrancesco	325.00	2.00
5/ 6/26	Note	Sylvian Silk Co	184.12	2.00
6/21/26	Note	Battista) Providenza) Crusco	475.00	2.00
6/17/26	Check	F. J. Koehler & Co	11.50	2.00
7/22/26	Check	F. J. Koehler & Co	15.50	2.00
7/24/26	Check	Joseph V. Pearlstein	51.75	2.00
7/24/26	Check	F. J. Koehler & Co.	15.50	2.00
5/ 1/26	Note	Wm. S. Hagedoorn	240.00	2.00

Complaint

7/31/26	Check	Thorn & Zakim P & WP Co.	400.00	2.00
7/30/26	Check	J. E. Crandall	50.00	2.00
8/ 1/26	Check	J. E. Crandall	100.00	2.00
7/ 6/26	Note	Frank Brusco	250.00	2.00
7/ 6/26	Note	Battista) Providenza) Crusco	200.00	2.00
7/15/26	Check	J. E. Crandall	51.00	2.00
8/ 6/26	Check	Otto Arienta	210.00	2.00
8/ 6/26	Check	J. Chester Massinger, Executor of Estate of Alfaretta Massinger, Deceased	100.00	2.00
8/ 6/26	Check	J. Chester Massinger, Executor of Estate of Alfaretta Massinger, Deceased	100.00	2.00
7/12/26	Note	Filomena Vatrano	200.00	2.00
7/12/26	Note	Maria) John) Bisceglia	400.00	2.00
7/12/26	Note	John) Antoinette) Vita	90.00	2.00
7/14/26	Note	John Turi	150.00	2.00
7/15/26	Note	J. E. Crandall	150.00	2.00
8/18/26	Check	J. E. Crandall	25.00	2.00
8/18/26	Check	J. E. Crandall	200.00	2.00
8/23/26	Check	J. E. Crandall	250.00	2.00
8/21/26	Check	J. E. Crandall	33.00	2.00
7/28/26	Note	Vincenza) Antonio) Calabrese	105.00	2.00
8/27/26	Check	F. J. Koehler & Co	40.25	2.00
7/28/26	Note	Thomas F.) Carmine F.) Vigorito	502.67	2.00
8/ 2/26	Note	Thomas) Neil, Jr.) McKiernan	355.00	2.00

Complaint

8/24/26	Check	J. E. Crandall	21.00	2.00
8/ 7/26	Note	J. E. Crandall	200.00	2.00
9/ 7/26	Check	Frank Brusco	88.40	2.00
9/ 8/26	Check	J. E. Crandall	39.00	2.00
9/ 9/26	Check	J. E. Crandall	100.00	2.00
9/ 9/26	Check	J. E. Crandall	375.00	2.00
9/11/26	Check	J. E. Crandall	100.00	2.00
8/11/26	Note	John) Maria) Biscaglia	375.00	2.00
9/ 8/26	Check	J. E. Crandall	50.00	2.00
8/16/26	Note	Paterson-Ridgewood- Westwood Transp. Co	2,000.00	2.00
9/16/26	Check	Angelus G. Bachalan	10.93	2.00
5/ 6/26	Note	Sylvian Silk Co.	185.94	2.00
9/20/26	Check	J. E. Crandall	165.00	2.00
8/23/26	Note	Battista) Providenza) Crusco	425.00	2.00
9/28/26	Check	Frank Brusco	66.20	2.00
10/ 5/26	Check	Herbert Chase	14.72	2.00
9/ 7/26	Note	Battista) Providenza) Crusco	155.00	2.00
10/ 6/26	Check	Thomas Spagnola	50.00	2.00
10/ 9/26	Check	U. S. Monument Wks.	22.00	2.00
9/13/26	Note	J. Y. Daugherty	425.00	2.00
9/13/26	Note	Cal-Jones, Inc. Harry Harris	1,800.00	2.00
7/14/26	Note	Battista Crusco	532.00	2.00
10/20/26	Check	Ralph Atkins	2,000.00	2.00
10/ 4/26	Check	J. E. Crandall	50.00	2.00
11/ 1/26	Check	J. E. Crandall	31.25	2.00
10/ 7/26	Note	Battista) Providenza) Crusco	135.00	2.00
11/ 6/26	Check	U. S. Monument Wks.	50.00	2.00

Complaint

11/ 8/26	Check	Robert Braddell	63.50	2.00
10/13/26	Note	Maria)		
		John) Bisceglia	350.00	2.00
10/13/26	Note	John)		
		Antoinette) Vita	75.00	2.00
10/13/26	Note	John Turi	60.00	2.00
11/10/26	Check	U. S. Monument Wks.	40.50	2.00
11/10/26	Check	U. S. Monument Wks.	59.50	2.00
9/20/26	Check	Joseph V. Pearlstein	150.00	2.00
10/22/26	Note	John J. Ritchie, Jr.	12.80	2.00
10/22/26	Note	Charles Barrow	31.00	2.00
10/25/26	Note	Michele)		
		Anna) Quirino	170.00	2.00
11/12/26	Note	J. Y. Daugherty	405.00	2.00
11/26/26	Check	J. E. Crandall	15.00	2.00
11/ 1/26	Note	Paterson-Ridgewood-		
		Westwood Transp. Co	2,000.00	2.00
9/ 3/26	Note	Raffi Confredi	500.00	2.00
11/29/26	Note	Ben. A. Neibart	80.00	2.00
11/ 3/26	Note	Battista)		
		Providenza) Crusco	375.00	2.00
12/ 2/26	Check	Wm. S. Hagedoorn	100.00	2.00
12/ 1/26	Check	John Soldovieri	196.20	2.00
12/ 8/26	Check	Wm. S. Hagedoorn	20.00	2.00
12/ 8/26	Check	Wm. S. Hagedoorn	55.00	2.00
11/12/26	Note	Maria)		
		John) Bisceglia	350.00	2.00
12/11/26	Check	Wm. S. Hagedoorn	260.00	2.00
12/ 9/26	Check	Frank J. Cusack	39.33	2.00
10/22/26	Note	Charles Barrow	31.00	2.00
12/20/26	Check	Gotthard Zurcher	59.00	2.00
11/30/26	Note	Tullio G. D'addario	400.00	2.00
12/ 2/26	Note	Raffi Confredi	400.00	2.00
12/ 3/26	Note	Battista)		
		Providenza) Crusco	350.00	2.00

Complaint

12/27/26	Check	Frank J. Cusack	39.33	2.00
10/ 6/26	Note	Katherine Lobbregt	1,900.00	2.00
12/ 8/26	Note	Frank Brusco	200.00	2.00
11/ 8/26	Note	Battista) Providenza) Crusco	130.00	2.00
1/10/27	Check	Wm. S. Hagedoorn	500.00	2.00
11/12/26	Note	Charles Lloyd	367.18	2.00
12/13/26	Note	Maria) John) Bisceglia	325.00	2.00
1/ 5/27	Check	Wm. S. Hagedoorn	62.60	2.00
12/14/26	Note	Paterson-Ridgewood Westwood Transp Co.	1,650.00	2.00
1/10/27	Check	Wm. S. Hagedoorn	260.00	2.00
1/10/27	Check	Frank J. Cusack	50.00	2.00
1/14/27	Check	Gotthard Zurcher	150.00	2.00
12/ 8/26	Check	Wm. S. Hagedoorn	20.00	2.00
1/17/27	Check	Wm. S. Hagedoorn	17.50	2.00
12/31/26	Note	Raffi Confredi	350.00	2.00
1/17/27	Check	Frank J. Cusack	16.00	2.00
1/ 4/27	Note	Katherine B. Lobbregt	1,900.00	2.00
2/ 7/27	Check	Raffi Confredi	19.85	2.00
11/ 8/26	Note	Irving Swersky	1,000.00	2.00
1/ 5/27	Check	Filippo Angiuolo	85.47	2.00
1/12/27	Note	Maria) John) Bisceglia	325.00	2.00
2/ 8/27	Check	Wm. S. Hagedoorn	150.00	2.00
10/22/26	Note	John J. Ritchie, Jr.	12.70	2.00
1/31/27	Note	T. G. D'addario	350.00	2.00
11/ 8/26	Check	Public Service Rwy Co George L. Walsh, Claim Agt	60.00	2.00
3/ 1/27	Check	Wm. S. Hagedoorn	68.25	2.00
2/ 5/27	Note	Wm. S. Hagedoorn	99.75	2.00
2/28/27	Check	Wm. S. Hagedoorn	152.48	2.00
2/ 8/27	Note	A. Lincoln Co. Inc	22.50	2.00

Complaint

3/ 7/27	Check	Wm. S. Hagedoorn	156.00	2.00
3/ 7/27	Check	Wm. S. Hagedoorn	15.00	2.00
2/15/27	Note	J. Y. Daugherty	350.00	2.00
3/14/27	Check	Joseph V. Pearlstein	258.85	2.00
3/18/27	Check	A. Shapiro	250.00	2.00
3/18/27	Check	Bert Gessler Co. Inc	37.69	2.00
3/23/27	Check	Wm. S. Hagedoorn	50.00	2.00
3/20/27	Check	Bert Gessler Co. Inc	26.27	2.00
3/21/27	Check	James DiCicco	21.46	2.00
3/23/27	Check	Wm. S. Hagedoorn	50.00	2.00
2/28/27	Note	T. G. D'addario	325.00	2.00
3/21/27	Check	F. R. Warburton	33.50	2.00
3/26/27	Check	Frank J. Cusack	33.90	2.00
3/28/27	Check	Bert Gessler Co. Inc	69.70	2.00
3/29/27	Check	Bert Gessler Co. Inc	200.00	2.00
4/ 2/27	Check	Wm. S. Hagedoorn	63.00	2.00
4/ 2/27	Check	Joseph V. Pearlstein	105.00	2.00
4/ 2/27	Check	Arthur E. Ball	23.98	2.00
3/28/27	Check	Joseph V. Pearlstein	404.84	2.00
4/ 1/27	Check	Bert Gessler Co. Inc	506.00	2.00
3/ 8/27	Note	Battista) Providenza) Crusco	120.00	2.00
2/ 8/27	Note	A. Lincoln Co. Inc	22.50	2.00
4/ 9/27	Check	Wm. S. Hagedoorn	50.00	2.00
4/ 5/27	Check	Wm. S. Hagedoorn	17.98	2.00
3/16/27	Check	Wm. S. Hagedoorn	19.50	2.00
3/11/27	Note	Maria) John) Bisceglia	295.00	2.00
3/21/27	Note	Michelina) Pietro) Cofrancesco	120.00	2.00
4/19/27	Check	A. Shapiro	1,000.00	2.00
4/12/27	Check	Wm. S. Hagedoorn	25.00	2.00
4/19/27	Check	Bert Gessler Co. Inc	32.78	2.00
4/19/27	Check	Best Gessler Co. Inc	24.91	2.00

Complaint

10/22/26	Note	John J. Ritchie, Jr.	12.70	2.00
3/24/27	Note	Wm. S. Hagedoorn	225.00	2.00
4/25/27	Check	Ralph Atkins	87.00	2.00
4/26/27	Check	Ralph Atkins	87.00	2.00
4/21/27	Check	Bert Gessler Co. Inc	50.17	2.00
4/28/27	Check	Wm. S. Hagedoorn	63.34	2.00
4/27/27	Check	Wm. S. Hagedoorn	156.00	2.00
4/ 2/27	Note	Ridgewood Auto & Taxi Co	750.00	2.00
5/ 5/27	Check	Bert Gessler Co. Inc	200.00	2.00
2/ 8/27	Note	A. Lincoln Co. Inc	22.50	2.00
4/28/27	Check	Wm. S. Hagedoorn	122.50	2.00
5/ 4/27	Check	Bert Gessler Co. Inc.	35.38	2.00
3/10/27	Note	Daniel M. Post	150.00	2.00
4/11/27	Note	Filomena Vatrano	45.00	2.00
4/11/27	Note	Maria)		
		John) Biseaglia	270.00	2.00
5/12/27	Check	Bert Gessler Co. Inc	150.00	2.00
5/14/27	Check	Marie Pascale	35.00	2.00
5/16/27	Check	Bert Gessler Co. Inc	25.00	2.00
5/ 4/27	Check	Bert Gessler Co. Inc	25.00	2.00
5/10/27	Check	Wm. S. Hagedoorn	22.50	2.00
5/31/27	Check	Wm. S. Hagedoorn	250.00	2.00
6/ 6/27	Check	Wm. S. Hagedoorn	144.66	2.00
5/ 4/27	Check	Bert Gessler Co. Inc	25.00	2.00
6/ 4/27	Check	Charles Alfano	16.75	2.00
6/ 9/27	Check	Charles Alfano	26.01	2.00
6/10/27	Check	Gotthard Zurcher	60.00	2.00
6/11/27	Check	Wm. S. Hagedoorn	156.00	2.00
5/23/27	Note	Pietro)		
		Michelina) Cofrancesco	500.00	2.00
6/23/27	Check	Isaac Golish	25.00	2.00
6/ 4/27	Check	William Bower	20.00	2.00
5/ 3/27	Check	William Bower	50.00	2.00
7/13/27	Check	Spencer R. Hawthorne	17.40	2.00

Complaint

7/16/27	Check	Isaac Golish	817.00	2.00
4/25/27	Note	Martin Caywood	620.00	2.00
7/22/27	Check	Little Falls Herald	10.40	2.00
7/27/27	Check	Little Falls Herald	23.50	2.00
7/30/27	Check	Little Falls Herald	50.00	2.00
7/ 5/27	Note	Raffi Confredi	175.00	2.00
7/ 8/27	Note	Battista) Providenza) Crusco	83.00	2.00
8/12/27	Note	John Turi	150.00	2.00
8/11/27	Check	Spencer R. Hawthorne	21.00	2.00
8/13/27	Check	T. M. Witzenberg	157.80	2.00
7/20/27	Note	Westside Cement Const Co	1,000.00	2.00
10/22/26	Note	John J. Ritchie, Jr.	12.70	2.00
8/29/27	Check	W. J. Himschoot	195.00	2.00
8/30/27	Check	W. J. Himschoot	15.50	2.00
8/26/27	Note	Cornelia Carberry	400.00	2.00
8/ 8/27	Note	Battista) Providenza) Crusco	75.86	2.00
7/11/27	Note	Daniel M. Post	100.00	2.00
6/17/27	Note	Joseph V. Pearlstein	50.00	2.00
9/19/27	Check	Helen Moeller	75.00	2.00
9/18/27	Check	Haledon Superior Laundry Co	28.00	2.00
9/17/27	Check	W. J. Homschoot	261.25	2.00
10/22/26	Note	John J. Ritchie, Jr.	12.70	2.00

Answer.

NEW JERSEY SUPREME COURT,
PASSAIC COUNTY.

<p style="text-align: center;">MERLE M. GEDDIS, Plaintiff, vs. WESTSIDE NATIONAL BANK OF WEST PATERSON, NEW JER- SEY, Defendant.</p>	}	Action at Law.	10
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1. Paragraph one of the bill of complaint is admitted. 20

2. Paragraph two is admitted in so far as it alleges that the said plaintiff did, in his position as a Notary Public of the State of New Jersey, act as subscribing Notary Public, but denies that he became entitled to retain the Notarial fees fixed by statute in connection therewith.

3. Defendant admits that part of paragraph three which alleges that the plaintiff did act as Notary Public from October 15, 1925, until September 24, 1927, but denies that plaintiff was entitled to retain any Notarial fees whatsoever. Defendant further admits that it received said Notarial fees, but denies that plaintiff was entitled to an accounting thereof from defendant. 30

40

Answer

FIRST SEPARATE DEFENSE.

1. At the time plaintiff entered into the employment of defendant, plaintiff agreed, in consideration of the salary to be paid to him for his services, that all Notarial fees collected by the defendant by virtue of the plaintiff acting as Notary Public for and in behalf of said defendant were to be the property of, and placed to the credit of defendant herein, the aforesaid agreement being in effect from October 15, 1925, to December 31, 1926.

2. That on or about January 1st, 1927, plaintiff and defendant entered into a new contract wherein plaintiff again agreed in view of the increased salary then and there to be paid to him by virtue of his employment by said defendant that the Notarial fees collected by said bank through the offices of the plaintiff acting as Notary Public for said defendant were to continue to be the property of, and to be placed to the credit of said defendant herein.

3. Plaintiff being well aware of these agreements did, by virtue of his position with defendant, place to the credit of the defendant all Notarial fees collected from time to time, during the course of his employment, by said defendant, for and in behalf of this defendant.

4. This defendant denies that it is indebted to plaintiff in any sum whatsoever.

DAVID S. HERMAN,
Attorney for Defendant.

Reply.

NEW JERSEY SUPREME COURT,
PASSAIC COUNTY.

<p style="text-align: center;">MERLE M. GEDDIS, Plaintiff, vs. WESTSIDE NATIONAL BANK OF WEST PATERSON, NEW JER- SEY, Defendant.</p>	}	<p style="text-align: center;">Action at Law.</p>	10
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The plaintiff herein denies each and every allegation contained in the answer filed by the defendant, and reserves the right to object to the answer and to move at the trial to strike it out as not containing a legal defense to the facts set forth in the complaint. 20

HART & VANDERWART,
Attorneys of Plaintiff.

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40

Order Striking Out Answer.

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

10

MERLE M. GEDDIS,
Plaintiff,

vs.

WESTSIDE NATIONAL BANK OF
WEST PATERSON, NEW JERSEY,
Defendant.

) Action
at Law.

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It appearing upon motion of Hart and Vanderwart, attorneys for plaintiff, that the answer of the defendant filed herein admits the facts contained in the complaint but alleges a defense which is not good in law; it is on this 18th day of February, A. D. 1929,

Ordered, that the answer filed by the defendant herein be struck out.

CLIFFORD L. NEWMAN,
Sup. Ct. Comm.

30

Entered: February 23, 1929,
On motion of
Hart & Vanderwart,
Attorneys for Plaintiff.

A true copy.

FRED L. BLOODGOOD,
Clerk.

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Motion for Judgment Final.

NEW JERSEY SUPREME COURT.

MERLE M. GEDDIS, Plaintiff, vs. WESTSIDE NATIONAL BANK OF WEST PATERSON, NEW JERSEY, Defendant.	}	Action at Law. 1927 Nov. 16 Sums. & Com. Passaic; served Nov. 18.	10
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The answer filed by the defendant in the above stated cause having been ordered stricken out by the Court,

It is ordered that judgment final be and hereby is entered in favor of plaintiff and against the defendant for the sum of Seven hundred and nine dollars and eleven cents, besides costs to be taxed. 20

Entered March 4, 1929. On motion of
 HART & VANDERWART,
 Attorneys.

Damages	\$709.11	30
Costs	65.00	
	\$774.11	

A true copy.

FRED L. BLOODGOOD,
 Clerk.

Judgment.

NEW JERSEY SUPREME COURT.

10

MERLE M. GEDDIS, Plaintiff, vs. WESTSIDE NATIONAL BANK OF WEST PATERSON, NEW JERSEY, Defendant.	}	Action at Law. By Default. Hart & Van- derwart, At- torneys.
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\$709.11
 65.00

 \$774.11

Judgment entered this fourth day of March, A. D. nineteen hundred and twenty-nine in favor of plaintiff and against the defendant for the sum of seven hundred and nine dollars and eleven cents damages and sixty-five dollars costs.

WM. S. GUMMERE,
 C. J.

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I, Fred L. Bloodgood, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the Judgment entered in above stated cause which said Judgment is recorded in this office in Vol. 28 of Judgments, page 352.

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In Testimony whereof I have set my hand and the seal of said Court
 (Seal.) at Trenton, this twelfth day of
 March, A. D. nineteen hundred and
 twenty-nine.

FRED L. BLOODGOOD,
 Clerk.

Opinion

Counsel for plaintiff alleges that the assignment of the fees by plaintiff to defendant was void as against public policy.

Both counsel agree that a Notary Public is a public officer.

- 10 The assignment of future earnings of a public officer in this State is declared void as against public policy. *Schwenk v. Wyckoff*, 46 N. J. E. 560. Counsel for plaintiff also cites cases to the same effect in other jurisdictions. But, inasmuch as this case is by our Court of Errors and Appeals, it is sufficient and controlling. One of the leading cases on this subject, cited by Justice Reed in the above case,
- 20 is *Bliss v. Lawrence*, 58 N. Y. 442, a decision by the Court of Appeals of the State of New York.

- Counsel for defendant apparently agrees that such assignment is against public policy, but argues that by the acceptance of his salary without objection and permitting the crediting of the fees to the defendant, plaintiff is now estopped from repudiating the agreement and
- 30 from claiming that these Notary fees now belong to him. The case of *Love v. Jersey City*, 40 Law 456, cited by counsel for defendant is not in point.

- In that case, Love was employed by the city at a fixed salary, which was reduced during the term for which he had been elected. The Court held (1) the ordinance fixing the terms and salaries of municipal officers, was not in
- 40 the nature of a contract with such officer; (2) the Legislature might authorize the reduction of

Opinion

the salary of the collector appointed for three years, during the continuance of such term; (3) if Love continued in office receiving monthly payments during the term, he thereby waived all objections to such reduction. The case did not involve the question of public policy. 10

Counsel for defendant argues that, conceding the invalidity of the bargain, because against public policy, the plaintiff is estopped from alleging it at this time, because he has never objected to the arrangement, and, without objection, permitted the bank to collect these fees and appropriate them to its own use. This contention seems to be supported by the cases of *DeBoest v. Gambal*, 58 Pacific 72, and *Second National Bank v. Ferguson*, 114 Ky. 516. Both of these cases recognize the doctrine that the agreement was void as against public policy, but both hold that by the acceptance of his pay without objection, he is estopped from setting it up at a later date. 20

In this proposition I cannot acquiesce. To permit one to retain the fees of a public officer, while the law demands that he, as such officer, perform the services, is one of the grounds which leads the courts to declare such an arrangement against public policy. It seems to me that, if the agreement was against public policy, no acquiescence in such arrangement, by plaintiff, could operate to render plaintiff unable to claim the invalidity thereof. 30

There seems to be no doubt that, except where the agreement was void as against public policy, the plaintiff could waive any irregulari- 40

Opinion

ties, but, if the contract was void *ab initio*, how could any conduct on the part of the plaintiff operate to make it valid, and thus frustrate the policy of the law in declaring it void on the ground that it was against public policy? The public interest lies at the bottom of the whole matter and the conduct of a party could not frustrate the public interest.

The answer will therefore be struck out with costs.

Supreme Court Commissioner.

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**NEW JERSEY COURT OF ERRORS AND
APPEALS**

<p style="text-align: center;">MERLE M. GEDDIS, Plaintiff-Respondent,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">WESTSIDE NATIONAL BANK OF WEST PATERSON, NEW JERSEY, Defendant-Appellant.</p>	}	<p>Action at Law. On Appeal from Judgment of Supreme Court.</p>
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**BRIEF ON BEHALF OF DEFENDANT-
APPELLANT.**

Abstract of Facts.

Respondent, whose regular occupation was that of a bank teller, and who, incidentally, was commissioned as a Notary Public, was employed by the appellant as cashier.

The first period of employment began on October 15, 1925, and continued to December 31, 1926. The contract provided for bi-weekly payments at the rate of Three Thousand Dollars per year to respondent for his services, in consideration of respondent acting for appellant also as Notary Public and to credit all fees for such notarial work to the latter. On or about January 1, 1927, the employment was renewed in all respects as aforesaid, except that respondent's salary was increased to \$3300. Respondent continued in appellant's employ until September 24, 1927.

During both periods of such employment, respondent had made protests of notes, drafts, checks and bills of exchange, the amount of which, totalling \$656, had been credited daily as earned by respondent to appellant in accordance with his agreement. During this entire time respondent had never made any claim or demand for the whole or any part of such fees. Immediately upon terminating his employment with appellant he brought this action. (This statement of facts appears in the complaint, case, pp. 5, 6; answer, case, pp. 19, 20, with the exception of the quantum of salary, which amount is here mentioned with the permission of respondent's attorneys.)

To the answer filed setting up these agreements in defence respondent replied generally, reserving the right, nevertheless, to dispute the legal sufficiency thereof at the trial. This he did in an informal motion made before the late Honorable Clifford L. Newman, basing his contention on the ground that:

The contract pleaded in the "First Separate Defense" of the answer was illegal and contrary to public policy.

Judge Newman, passing upon the motion as a Supreme Court Commissioner, agreed with the respondent, and struck out the answer (case, p. 22); whereupon judgment was entered (case, p. 24). See also the opinion (case, pp. 25, 26, 27, 28), now reported unofficially in 7 New Jersey Miscellaneous Reports (No. 12, issue of March 23, 1929), 245.

Defendant appeals, and assigns four grounds (case, pp. 1, 2 and 3).

Argument.

POINT ONE.

The learned commissioner erred in ruling that the agreement pleaded in the special defense was void and illegal in that the same was contrary to public policy.

At the outset, it may be stated that this case seems to be one of first impression in this state, and the *precise facts* at bar have received appellate consideration in but one other tribunal in this country, insofar as counsel's research has been able to find, to which adjudication reference will hereinafter be made.

It is admitted that a Notary Public is a public officer. The Court below assumed, because of this fact, that the restrictive public policy enunciated in *Schwenk v. Wyckoff*, 46 N. J. E. 560, governed. *That case involved the assignment of the future pay of an army officer.* Reed, J., speaking for Court of Errors and Appeals, at pages 562, *et seq.*, said:

“The considerations which led to this judicial result were in substance the following: *It was apparent that the salary or remuneration incident to a public office, as a rule, were essential to a decent and comfortable support of the incumbent. If the officer should be deprived of this support, there would arise a hazard of his being driven to an inappropriate meanness of living, of his being harassed by the worry of straightened circumstances and tempted to engage in unofficial labor, and of the likelihood of his falling off in that official interest and*

vigilance which the expectation of pay keeps alive. *It was because of these probable consequences, that the courts refused to countenance any act or proceeding which might result in stripping the officer of his anticipated reward.*" (Italics ours.)

As the facts herein do not concern the question of *deprivation of support* (respondent receiving a handsome salary as compared to his statutory fees), this rule of public policy laid down in the *Schwenk* case has no application, and the ruling of the learned Court below that "*it is sufficient and controlling*" (see opinion, case, p. 26), is clearly reversible error.

Moreover, the Court in the *Schwenk* case expressly sanctions, *obiter*, such a contract as at bar. In the concluding sentence of its opinion, the Court says: "* * * the rule announced protects his pay from himself and his creditors, *until he earns it.*"

That is this case.

Respondent received his salary bi-weekly and credited his fees to appellant *as he earned them*, from time to time (answer, case, p. 20, fol. 30). The dictum of the *Schwenk* case is therefore of overwhelming significance in the present instance.

Respondent, relying upon the *Schwenk* case (*supra*), as a foundation, cited two cases to the Court below involving notaries employed by banks, viz, *Pitsch v. Continental and Commercial National Bank of Chicago*, 305 Ill. 265, 25 A. L. R. 164, and *Ohio National Bank of Washington v. Hopkins*, 8 App. D. C. 146.

The first syllabus of the *Pitsch* case (*supra*), distinctly shows a sharp divergence from the facts of the case at bar:

“A contract by a Notary Public to give his whole time to a bank for the protesting of negotiable paper, for a small percentage of the statutory fees for such service, and his assignment semi-monthly of the balance of the fees to the bank, and release of it from liability to him therefore, in consideration of the agreement of the bank to employ him on the same terms for the next half month, is void, as against public policy.” (Italics ours.)

In the *Hopkins* case, the remarks of Chief Justice Alvey show a similar variance from the facts herein:

“The terms of the agreement as set forth in the affidavit are that the defendant would employ the plaintiff to do all its notarial work and that the plaintiff would accept in full payment for his services fifty per cent or one-half of the legal fees chargeable therefor as fast as collected by the defendant and the other half to be retained by the defendant as its own.” (Italics ours.)

Since the contract at bar does not involve a *partial* acceptance of the fees as complete consideration (as did the *Pitsch* and *Hopkins* cases), but distinctly presents a *merger* of the fees in a superior employment, among other factors, these two cases are entirely pointless.

However, a state of facts in all particulars identical with the facts of the case at bar was considered by the Appellate Court of a sister state of respectable jurisdiction. In the case of *Second National Bank of Ashland v. Fergu-*

son, 114 Ky. 516 (Court of Appeals of Kentucky, January 13, 1903), the respondent was a bank clerk receiving \$50 per month for his services, which included notarial duties. After receiving such compensation, he sued for his notarial fees, amounting to less than \$50 a month, on the ground that the contract was illegal. The Court held that, the contract having been understood, *and the lump sum accepted being greater than the fees, there was no contravention of public policy.*

Hopson, J., speaking for the Court, said:

“When appellee remained in the bank after the board of directors had by resolution fixed his salary, and received month after month from it the amount of salary thus fixed by the board, without demanding more or asserting any claim for other compensation for his services, he must be conclusively held to have rendered the services on the terms proposed by the board, and to have accepted those terms. When at the end of each month the \$50 was paid to him, it was paid not only in satisfaction of his services as bookkeeper, but also in satisfaction of his services as Notary Public. His fees as Notary Public were then earned, and he knew the amount of them. The agreement beforehand to commute his fees as Notary Public or to assign them to the bank was not binding on him. *Bank v. Hopkins*, 8 App. D. C. 146. But when, after the services had been rendered and the fees earned, he accepted a gross sum in satisfaction of his fees, and as compensation for his work as bookkeeper, a different question is presented. For he had a right to assign to the bank or to anybody else his fees for services already rendered. * * * If at

the end of any month, he had refused to accept the \$50 and had demanded his fees, on the ground that his legal fees as Notary Public were more than \$50, the contract referred to would have been no bar to a recovery of these fees, for the reason that a contract in advance by a public officer to take less than the legal fees for his services cannot be enforced. 15 Am. & Eng. Enc. Law (2d Edition), 965. But when he accepted the \$50 each month in full of his services as bookkeeper, and also of his fees as Notary, he can no more maintain an action for his fees as Notary than for his services as bookkeeper, *for one has been paid just as truly as the other*. The \$50 a month was not paid him alone for his services as bookkeeper. It was paid him in satisfaction not only of these services, but also of his services as Notary Public, and was accepted by him as such, for he made no demand of anything more until after he left the service of the bank; and before July 18, 1893, his notarial fees were paid along as the work was done, and when, after this, they were not paid in this way, he was bound to know that the \$50 was paid in satisfaction of these fees, as well as his salary as bookkeeper. *The Court cannot inquire what part of the \$50 was paid on one account or the other*, for in this we have nothing to guide us. We cannot say the \$50 was paid for appellee's services as bookkeeper, *for that is not the fact. The acceptance of a lumping sum, covering both his official fees and his personal services, contravenes no public policy, when the sum so accepted is greater than the fees, and the arrangement is fair and fully understood. The claim for fees, having been satisfied by the monthly payments of \$50, cannot now be sued upon. He who ac-*

cepts monthly for his services the money of another, knowing that it is paid in satisfaction thereof, will be estopped, after thus remaining in the employment, to demand greater pay for his services * * *.” (Italics ours.)

The facts of this case are squarely on all fours with the facts at bar. The decision adopts a sensible, rational and practical point of view and is consonant with principles of fair dealing and reasonable demands of everyday business convenience. *Public policy is nothing more than that:*

“*Public policy is the community common sense and common conscience extended and applied throughout the states to matters of public morals, public health, public safety, public welfare and the like; it is that general and well-settled public opinion relating to man’s plain, palpable duty to his fellow-men, having due regard to the circumstance of each particular relation and situation.*” (*Pittsburgh, C., C. & St. L. R. Co. v. Kinney*, 95 Ohio St. 64.) (Italics ours.)

POINT TWO.

The learned commissioner erred in ruling that the plaintiff was not estopped by his conduct in the premises from setting up the invalidity, if any, in the said agreement.

Appellant refers to the concluding portion of the excerpt from the opinion delivered by Hopson, J. (*Second National Bank of Ashland v. Ferguson, supra*), on the question of estoppel. There is no doubt that this doctrine should be

invoked against respondent herein, under that decision.

In the case of *Love v. Jersey City*, 40 N. J. L. 456, the Supreme Court invoked an estoppel against the plaintiff, City Collector of Jersey City, who had consented to and accepted a reduction of his salary. Scudder, J., speaking for the Court, said:

“His continuance in office was an assent to the reduction of his salary, and his receipt of monthly warrants and payments during the whole term is an estoppel against any error in the mode of reduction or the amount fixed by the board of finance and taxation. * * *
A public officer is no less strongly bound by his active consent to the terms of his employment, where he has every month received his salary at the reduced rate, with nothing more than an informal notice to some member of the board of finance and taxation that he shall claim a greater compensation. He had the simple remedy in his own hands, if he felt aggrieved by the action of the legislature and board of finance. If he continued in office his acquiescence establishes his consent to the terms fixed by the board.”
 (Italics ours.)

The learned Court below seemed to feel that this case was not in point *on the question of public policy*. Nor was it urged below *on that basis*, but was rather suggested, as it is here suggested, *on the question of estoppel as affecting the conduct of a public officer with respect to his remuneration*; and the Collector of the City of Jersey City is, by every conceivable token, as much a public officer as is a Notary Public.

There are decisions of similar import in other jurisdictions, some of which are cited in the opinion below (*vide*), but it is not the function of this brief to elaborate on them here.

POINT THREE.

The learned commissioner erred in failing to take into consideration the fact that the salary of the plaintiff, as fixed in the original agreement and in the renewal thereof, was far in excess of the notarial fees claimed.

Respondent during both terms of his employment had received from appellant bi-weekly payments at the total rate of \$6,300. During the same period he protested in all \$656 worth of paper, the proceeds of which were credited daily to appellant. To permit him at this time to recover this additional sum of \$656 is not only contrary to all principles of fair dealing and an unwarranted interference with the freedom of contract, but is unjustified by law.

Unquestionably, had respondent at the inception of the contract insisted *in limine* upon keeping his notarial fees, he would not have been remunerated at the rates received. The salaries were fixed by the parties with the fact before them that these fees were to become the property of appellant. Had there been any different conception, the contract would have been so drawn that the salary would have abated to the extent of the fees.

The consequences of an affirmance of the decision below would be to lay every financial in-

stitution open to law-suits by disgruntled employees, and would even permit stenographers who work and incidentally act as Notaries for lawyers to sue them for notarial work done, when all of such services have been contemplated as a unit in the original contract of hiring.

Appellant respectfully insists that the merger of respondent's inferior compensation as Notary in his superior employment as cashier should be of the essence of the *ratio decidendi*, and that the failure of the learned Court below to consider this aspect of the case was fundamental and reversible error.

POINT FOUR.

The learned commissioner erred in failing to rule that a notary public has a right to waive notarial fees prescribed by statute.

In addition to the three considerations mentioned up to this point, which, according to our view, should have been severally and collectively controlling below, there is an additional one which, we believe, should be dispositive of the question at bar, viz, that there is nothing inherently wrong with the proposition that the fees of a Notary Public may be waived, especially where they have been merged in a broader and more liberal compensation derived from a superior employment.

The question of *outright waiver* is discussed in 46 C. J., 530 (Section XIII Title "Compensation"):

“ * * * ; but some cases, while recognizing the rule, have refused to allow recovery of the statutory fees where, after the fees have been earned, the waiver or assignment was voluntarily renewed by acceptance of the salary agreed upon, *at least where the sum so accepted, for notarial and other services, is greater than the amount of fees earned, or where the Notary's official acts were performed in the course of the services for which he was employed, his earnings therefor belong to his employer.*” (Italics ours.)

This view, as expressed by the editor, seems to be the better one. It has been unequivocally adopted by the Court of Appeals of New York, and is therefore entitled to great weight. In the case of *Morgan v. City of New York*, 190 N. Y. (Court of Appeals) 237, plaintiff was a messenger in a department of the City Government, serving under a fixed salary. He also held the office of Commissioner of Deeds, authorized to administer oaths and take acknowledgments. He sued the City of New York for fees accruing from the certification of 27,500 affidavits. The lower court, which had denied a recovery, was reversed because the facts showed that these notarial duties were performed separately, distinctly and wholly apart from his employment as messenger. The Court of Appeals clearly stated the law involved and reviewed the decisions applicable. Haight, J., speaking for the Court, at page 239, said:

“In the case of *Merzbach v. Mayor, etc., of N. Y.* (163 N. Y. 21), we held that the office of Notary Public was not incompatible with the position of messenger or librarian in the office of the district at-

torney of the County of New York and that a person holding such position may recover his statutory fees for services rendered at the request of the district attorney, *unless he has waived his right thereto, either expressly or impliedly.* (Italics ours.)

“In the case of *McCabe v. City of New York* (77 App. Div. 637, affd. 176 N. Y. 587), it was held that the plaintiff, who held a position in the building department of the City of New York, for which he received a salary, could not recover compensation from the city for services rendered by him as a commissioner of deeds in taking affidavits *where it was understood that such services were to be rendered as a part of his clerical duties.* and to the same effect is the case of *Benjamin v. City of New York* (77 App. Div. 62). (Italics ours.)

“The distinction, therefore, is sharply drawn. The plaintiff is entitled to recover for his official services rendered as a commissioner of deeds in taking affidavits *unless such services were performed with the understanding that they should be part of his duty as a messenger in the department for which he received a salary. * * **” (Italics ours.)

This principle is fair and equitable. If a Notary, wishing to accept other employment, bargains with his employer on the basis that any accrual from notarial fees shall become the employer's property, and receives a gross sum from such employment far in excess of the fees resulting from such notarial work, *he should be compelled to respect such agreement.*

The agreement pleaded by the defendant in the separate defense and the facts stated in the

answer must be accepted as true for the purposes of this motion, as the issue is raised on a motion to strike out, which supplants the common law demurrer under the present Practice Act. S. C. R. 1919, No. 40.

CONCLUSION.

The ruling of the Court below should therefore be reversed, with direction that a *venire de novo* issue.

Respectfully submitted,

DAVID S. HERMAN,
Attorney for and of Counsel,
with Defendant-Appellant.

89 MAY. 1. 1929

New Jersey Court of Errors and Appeals

MERLE M. GEDDIS,

Plaintiff-Respondent

vs.

WESTSIDE NATIONAL BANK OF
WEST PATERSON, New Jersey,
a corporation,

Defendant-Appellant.

Action at Law
On Appeal
from Judgment
of
Supreme Court

BRIEF ON BEHALF OF PLAINTIFF- RESPONDENT

This case was brought before the New Jersey Supreme Court upon a motion made by the plaintiff-respondent to strike out the answer filed by the defendant-appellant a motion made preliminary to a trial of the questions of fact raised by the replication—the plaintiff-respondent having reserved his right to object to the answer at the time of the trial of the issues joined.

Facts

The complaint alleges that plaintiff-respondent was a Notary Public appointed by the Governor of the State under the statute and was also an employee of the defendant as cashier. That as a Notary Public he acted as a subscribing Notary upon the notices of protest in connection with all negotiable instruments in the bank of which he was cashier—the de-

defendant-appellant and he thereby became entitled to the Notarial fees in the sum of \$656.00, and he attached a list of these to the complaint.

The answer admitted that the plaintiff was a Notary and that he acted as subscribing Notary in accordance with the schedule set forth, but denied that he was entitled to retain his fees because of the fact that the contract of employment between plaintiff-respondent and defendant-appellant provided that in consideration of plaintiff-respondent's salary to be paid to him by defendant-appellant all Notarial fees collected were to be placed to the credit of the defendant-appellant; that such an agreement was reiterated when the first term of plaintiff-respondent's employment was finished and that it was at that time renewed. It seems to be agreed that as the fees were taken in by the plaintiff-respondent as a Notary they were placed by him to the credit of the defendant-appellant and such fees have always been in the defendant-appellant's possession.

LAW AND ARGUMENT

POINT I

A NOTARY PUBLIC IS A PUBLIC OFFICER.

He receives his commission to act as Notary from the Governor of the State and it is his duty to perform services for the public. There are a number of decisions which substantiate such a view as to the public character of this well-known official. We quote a few of them:

"A Notary is a public officer appointed by the chief Magistrate of the State and is under bond for the faithful performance of his duties as such and keeps a public record of his acts, certified copies of which may be received in evidence." *First National Bank vs. German Bank* 78 N. W. 195-197.

"Notaries are public officers, whose duties are confined to a particular locality. They hold themselves out as trustworthy and furnish bond to protect those who employ them against loss occasioned by their failure to discharge their duties with which they are entrusted." *Stork vs. American Surety Co.*, 33 South 742-743.

"A Notary Public is a well known public official, whose duties are both administrative and judicial. In Ohio he is appointed by the Governor for three (3) years and receives a commission, on which he is required to endorse an oath of office. That he is an officer of the State, engaged in the administration of the Law of the State and that he exercises most important functions by authority of the State cannot be denied." *Beltman vs. Warwick*, 108 Fed. 46-47.

While we have not been able to find an exact characterization of a Notary Public in this State it seems plain that he is to be so regarded in this jurisdiction. He is created a public official by statute; there is a certain choice involved in his selection; his duties are prescribed and the fees for his services to the public are determined by law—he has no right to ask more or less than the fees prescribed, and he is undoubtedly compelled by law to act for the public when called upon. It is true that he is not required in all cases in this State to furnish a bond, but that goes to the extent of his official acts rather than to the essential character of them.

POINT II

It is contrary to public policy for a public officer to assign, sell or in any way part with his future earnings, either in whole or in part.

In a Missouri case known as *State of Missouri vs. Williamson*, 21 L. R. A. 287, a mail carrier brought a suit to recover his salary from a third party after his assignment of it to him. The Court said:

“An assignment by a mail carrier in the Post Office Department of a month’s salary not yet earned is void as against public policy.”

In the case of *Bowery National Bank of New York vs. Wilson*, 9 L. R. A. 706, a Sheriff assigned all the fees to which he might become entitled from the State and it was held, upon a suit to recover the same, as follows:

“It is settled in this State (New York) that an assignment by a public officer of his unearned salary is contrary to public policy and is void.”

The case of *Wood vs. Kansas City*, 162 Missouri 303, is authority for the proposition that a Notary employed by a city under an ordinance providing that his fixed salary be full compensation for all Notarial fees earned by him can recover from the city such fees and the Ordinance was ruled invalid.

The leading case in New Jersey concerning this point is that of *Schwenk vs. Wyckoff*, 46 N. J. Equity

560. In that case judgment had been entered against an army officer's future salary. Justice Reed delivered the opinion of the Court and in it he adopted the rule set forth in *Bliss vs. Lawrence*, a case in 58 N. Y. 442 as the law of this State. The Court said that in the case of *Bliss vs. Lawrence*, 58 N. Y. 442, after a thorough review of the English and American cases by Judge Johnson, this view was taken:

“This has become a leading case in this country and the doctrine announced by it, viz: that the assignment by a public officer of the future salary of his office is contrary to public policy and void, has been followed in this country.”

In the case at bar, admitting the facts of the answer for the purposes of this motion, an agreement was made by this plaintiff-respondent that so long as he should be employed by the bank the bank might have his Notarial fees. Admitting that he is a public officer, it is very plain that the case comes directly under that of *Schwenk vs. Wyckoff* and the plaintiff is entitled to his judgment.

POINT III

While the courts of this State seem not to have passed upon the precise question here presented, well considered opinions in two excellent jurisdictions have decided an identical state of facts in favor of the Plaintiff Notary Public.

The two leading cases considered are:

- (a) Pitsch vs. Continental and Commercial National Bank of Chicago, 305 Ill, 265, and
- (b) Ohio National Bank of Washington vs. Hopkins, 8 App. D. C. 146 (a Federal case).

Both of these opinions bring forth the further conclusions that the agreement between the Notary and the Bank for the assignment of the Notarial fees to the bank was First, without consideration, and Second, that plaintiff by reason of his status and the nature of the agreement may not be prevented from a recovery even after the money has been paid to the bank. We wish to detail these two cases in conclusion.

The Pitsch case is reported in 25 A. L. R. at Pages 168-169. We quote from it:

“The proposition that a contract whereby a public servant, whose compensation is fixed by statute, agrees to accept for his official services something different from that provided by statute is contrary to public policy and void. It seems to be well supported by authority as well as justified in principle (quoting cases) the compensation of a public official for the performance of his official duties is not a matter for traffic or trade, for bargaining or for favoritism.”

The facts involved seem to go further than the case at Bar for in the Pitsch case written instruments were executed semi-monthly by the bank employee assigning the fees which HAD BEEN earned as Notary, and the assignment released the bank from all claims and the Court held that such assignments were void and contrary to public policy. In the case at Bar according to the answer filed by the defendant the agreement with the plaintiff concerned

the fees he was to earn in the FUTURE and during his employment.

In the Pitsch case, as well as in the Ohio National Bank case, above referred to and later herein set forth in full, the question of estoppel was raised and it was contended that the crediting of the fees to the profit and loss account forming a basis of the declaration of dividends constituted an estoppel against the employee. The Court said:

“There was no estoppel. The contract was illegal and could not become legal by long continuance or by acquiescence or by frequent renewal. The violation of public policy did not cease to be a violation because of its frequent occurrence.”

We now wish to set forth in full the Ohio National Bank case since its ratio decidendi is so clear and convincing.

The Ohio National Bank of Washington vs. Hopkins, 8 Dis. Col. App. 146.

Chief Justice Alvey:—“There has been a question made as to the sufficiency of the terms of the affidavit of defense under the rule of court apart from the subject matter of the defense set up in the affidavit. But with the view we have of this case that objection is immaterial and need not be considered.

The two principal questions presented on the affidavit of the defendant are 1st, whether there is any sufficient legal consideration shown for the agreement set up in the defendant's affidavit, and 2nd, whether that agreement if otherwise valid is not in contravention of sound public policy, and therefore void.

1. With respect to the first of these questions, it is a well-known attribute of a Notary Public that he is a public officer recognized as such by the COMMON Law, the Civil Law and the Law of Nation. His duties are principally conserved with the commercial law of the world but he has many superadded duties prescribed by statute and his fees for services, whether earned as commercial agent or in the performance of duties prescribed by statute, are all fixed and determined by law. This is the case of Notaries appointed in this district Rev. St. U. S. D. C. Secs. 983 and 990. And for the performance of such duties, the notary himself has no right to ask more, nor less, than the fees prescribed. Nor has any person for whom such services are performed the right to require such services from the Notary for less than the amount of the fees prescribed. If, therefore, the defendant bank was the owner of the paper protested or noted for protest, it was bound to pay the fees prescribed by law for the official service rendered and if it was the mere collecting agent for its correspondents in employing the plaintiff in his official capacity it was bound to place the paper in the hands of a competent and careful notary and for his services to pay the lawful fees and charge the same in account to the correspondent for whose benefit the service was rendered according to universal custom in such cases. Therefore the payment of the fees prescribed by law or half the amount thereof could constitute no valid consideration for the agreement stated in the affidavit. Nor could the mere favoritism in the selection of the plaintiff, in preference to other notaries for the performance of the official services, be regarded as constituting a valid consideration for the agreement stated.

2. But if this were otherwise and the agreement could be regarded as founded upon consideration, such an agreement would manifestly be in contravention of sound public policy and therefore void. The policy is obvious that will forbid such relation to exist as that created by the agreement set up in the affidavit of defense between a bank and a Notary Public handling the paper affecting the rights of third persons and where the incentive might often be strong to suppress and conceal the evidence of the negligence of each other. The Notary is intended to be and from the nature and importance of his office should in all cases be required to act independent of any influence of the bank or agent placing the paper in his hands for official action. From the moment that he receives the paper for notarial action he thereby becomes the agent of the owner of the paper and his paramount duty is to him and those affected by his official action.

The bank acting as either owner of the paper or as a mere intermediate agent in employing the services of the notary, should have no share in the profits or fees of the latter's office.

The terms of the agreement as set forth in the affidavit are that the defendant would employ the plaintiff to do all its notarial work and that the plaintiff would accept in full payment for his services 50% or one-half of the legal fees chargeable therefor as fast as collected by the defendant and the other half to be retained by the defendant as its own. This in effect was the assignment of the one-half of the fees as earned in the future and not the assignment of fees actually earned and due. Such an assignment is clearly not allowable. It has been decided in many cases that an assignment by a public officer of the salary or fees of his office before due and payable is

contrary to public policy and void. *Bango vs. Dunn*, 66 Cal. 72—*Bank vs. Fink*, *Schloss vs. Hewlet*, 81 Ala. 266—*Beall vs. McVicker* 8 Mo. App. 202, and this upon clear and satisfactory reason. In the case of *Bliss vs. Lawrence*, 58 N. Y. 442, the question was most elaborately discussed by counsel and the court in a learned and well reasoned opinion unanimously held that an assignment of the salary of a public officer before it is earned is void as against public policy.

Cases both English and American were reviewed in that case and it was fully shown that the principle was of early foundation in the law. Among the more recent English cases cited by the court in *Bliss vs. Lawrence* is that of *Liverpool vs. Wright*, 28 L. J. (N.S.) Ch. 871, where the question involved was as to the assignability of the fees of the office of a clerk of the place and Vice Chancellor Wood, after disposing of another question, then proceeded to say: "There is a second ground of public policy for which the case of *Palmer vs. Vaughn*, 3 Swanst. 173 is a leading authority, which is this: That independently of any corrupt bargain with the appointor, nobody can deal with the fees of a person who holds an office of this description, because the law presumes with reference to an office of trust, that he requires the payment that the law has assigned to him for the purpose of upholding the dignity and performing properly the duties of that office and therefore it will not allow him to part with any portion of those fees either to the appointor or to anybody else. He is not allowed to charge or encumber them. That was the case of *Parsons vs. Thompson*, 1 H. B. 1. 322. Any attempt to assign any portion of the fees of his office is illegal on the ground of public policy and held therefore to be void.

And in principle, the case of *McGuire vs. Corwine*, 101 U. S. 108, would seem to be quite applicable to this case and against the defense set forth in the affidavit. In that case it appears that the testator of the defendant, had agreed to pay the plaintiff one-half of all fees he should receive in certain cases for the aid of the plaintiff in getting the testator the appointment of special counsel for the government and for the assistance which the plaintiff was to render in procuring testimony and giving information in support of the defense. The Supreme Court of the United States held that contract to be against public policy and void. There the consideration set up was the procuring the appointment of the party as special counsel in cases where the government was concerned and here the alleged consideration for the one-half of the fees to be retained by the defendant is the exclusive employment of the public officer to do all the notarial work required by the defendant to be done and the payment over of the other half of the fees. In both cases the agreement tended to vicious practices and malfeasance in public office and the defense in the present case is no less in violation of public policy than the agreement attempted to be enforced in *McGuire vs. Corwine*. It is agreed, however, on the part of the defendant that if the agreement set up in the affidavit of defense be void as in contravention of public policy, the plaintiff is not entitled to judgment under the rule of the Court, because he is in *pari delictu* with the defendant and therefore not entitled to recover the money retained by the defendant. But there is a distinction between the position of the plaintiff and that of the defendant in this action. The plaintiff asserts a right to recover the amount of fees earned and allowed by law and which the defendant has received and unlawfully detains from him. To repel this claim the defendant

sets up an independent and collateral contract as a defense whereby it was agreed that the fees sued for should be retained by the defendant. The plaintiff in this action does not claim by or through the contract set up by the defendant but his claim is quite independent of it. It is founded on his legal rights as prescribed by the Statute. It seems to be well established by the decisions that the test whether a demand connected with an illegal transaction is capable of being enforced at law is whether the plaintiff requires any aid from the illegal transaction to establish his case. *Simpson vs. Bloss*, 7 Taunt. 246

—*Atkinson vs. Denby*, 6 Hurl & N. 778—*Phalen vs. Clark*, 19 Conn. 421 *Ins. Co. vs. Hull*, 51 Ohio St. 270.

In this last mentioned case of *Ins. Co. vs. Hull*, the principle is very fully discussed and it was there held that an illegal agreement made by the plaintiff will not defeat his right to recover unless his cause of action is founded upon or arises out of such illegal agreements. This would seem to be the result of the recent authorities upon the subject. See *Armstrong vs. Orr, Ex. Bank*, 133 U. S. 469.

The action in this case not being founded upon the illegal agreement set up in the affidavit of defense but upon an independent consideration not controverted by the defendant in its affidavit of defense the judgment under the rule was properly entered.

In conclusion we believe that the well considered cases bear out the proposition and entitle plaintiff-respondent to the entry of a summary judgment. We believe that the only case which may be cited in favor of the defendant is that of *Second National Bank vs. Ferguson*, 114 Kentucky 516. A close examination of this case shows that the decision was made and,

in fact, turned upon the point that the services had been rendered, the fees earned and the employee had accepted a gross sum in satisfaction of his fees and as compensation for his work as bookkeeper. In other words, the Kentucky Court agrees that an agreement beforehand by the employee to commute his notarial fees was not binding on him. The Kentucky Court said:

"The facts of this case illustrate the justice of this rule for the bank, acting on the idea that it did not have to pay the notarial fees, failed to collect something like three-fourths of them from its customers, and if appellee is now allowed to recover a loss will be thrown upon it without remedy."

We submit that there is no such question raised by the defendant bank in the case at bar. It is admitted by the answer of the defendant that the fees set forth in the plaintiff's complaint were collected, and an inspection of the schedule attached to the complaint shows that the fees allowed by statute were charged in each and every case.

In other words, the Courts of Illinois and Ohio are definitely in agreement that the plaintiff may recover in this case but the Court of Kentucky disagrees because such a decision will place the bank, on the facts in the case before it, in the position of not being able to collect from customers who had not been charged a proper statutory amount. It would appear as though this feature of the Kentucky decision accounts for the different rule in that jurisdiction.

It is respectfully submitted that the judgment ordered to be entered by the learned Commissioner should be affirmed.

HART & VANDERWART,

Attorney for and of Counsel
with Plaintiff-Respondent.

