

Defendant also insists the Chancellor erred in holding the complainant was overcharged or did not know he was being charged with life, accident and health insurance.

We reject this insistence and concur with the Chancellor. The complainant testified he had no knowledge of being charged with insurance premiums except the fire insurance and he was never given any policies. From the proof as a whole, it appears that as a matter of course the defendant included these insurance premiums on all loans.

Defendant also challenges the Chancellor's holding on the investigation fees. As pointed out by the Chancellor, the defendant's manager testified he could not say what expenses, if any, had been incurred in checking the credit of the complainant. With the frequency and regularity with which these loans were "flipped," we doubt if the defendant had sufficient time to make an investigation on each loan.

We are in accord with the Chancellor that the repeated charges of an investigation fee and the charges for the insurance premiums which the plaintiff had not requested were designed to conceal and to secure excessive charges for the use of the money.

Our Supreme Court, in the case of *Mallory v. Columbia Mortgage & Trust Co.*, 150 Tenn. 219, said:

"In determining whether or not a given transaction is tainted with usury it is generally held that the court will disregard the form and look to the substance. *Good faith is the decisive factor when compensation is exacted and received by an intermediary [lender] in addition to the legal rate.*"

In our opinion these charges are in no way expenses incident to the making of the loan or do they bear a reasonable relation to the service extended by the lender. On the contrary, they are evidence that the lender did not deal with the borrower in good faith.

Under Tennessee law where usury appears upon the face of an instrument, the obligation is unenforceable. *White v. Kaminsky*, 196 Tenn. 180, 264 S.W. 2d 813.

If, however, usury does not appear upon the face of the contract, it is valid to the extent of the money loaned and lawful interest and voidable only as to the usurious excess and to this extent the court will enforce the contract. *Bank v. Walter*, 104 Tenn. 11, 55 S.W. 301.

There being no usury on the face of these instruments, the Chancellor correctly applied the latter rule by enforcing the contract and giving the respective parties credit due for all amounts within the contract.

This brings us to the Chancellor's holding the defendants were liable for punitive damages.

Our Supreme Court, in the case of *Bryson v. Bramlett*, 321 S.W. 2d 555, reversed this court and held that a borrower may recover punitive damages from a money lender in acts involving fraud, malice, gross negligence, oppression or harassment. The reason given for the allowance was to serve as an example or warning to the parties and to deter similar transactions. So, there seems no question that the Chancellor had the authority to award punitive damages.

As to the amount of punitive damages, the case of *Lichter v. Fulcher*, 28 Tenn. App. 670, 125 S.W. 2d 501 at page 508 gives a clear and succinct statement:

"Where the case is tried before the Chancellor it is obvious that it is peculiarly within the discretion of the Chancellor as to how much, if any, punitive damages should be allowed. It is a matter of discretion which will not be interfered with by this court. We know of no fixed rule which could guide this or any other court in fixing the amount of exemplary damages to be awarded. And we know of no reason why we should substitute our judgment for the judgment of the Chancellor in this respect. The fact that we have the latter say in the matter offers no reason for altering the decree entered, and we are not inclined to do so."

We are of the opinion it is wrong for a lender of money to charge investigation fees when no investigations are made and to charge for insurance premiums without the knowledge of the borrower. To do such on eighteen successive loans compounds these wrongs and is unconscionable—one step removed from pick-pocketing and larceny. Such action is a gross display of bad faith on the part of the lender and justifies an award of punitive damages.

After considering the entire record, we find the evidence preponderates in favor of the Chancellor's decree and there was no abuse of discretion on the part of the Chancellor in awarding punitive damages.