ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF KANSAS.[2]

SUPREME COURT OF NEW YORK.[3]

SUPREME COURT OF WISCONSIN.[4]

ADMIRALTY.

Collision—Duty of Steamer.—Though a steamship pursuing, in a crowded harbor, for her own greater convenience in getting into dock in a particular state of the harbor, a channel not entirely the ordinary one for vessels of her size, be bound to more than ordinary precaution, yet if she has a right to use that channel and do take such more than ordinary precaution, she is not responsible for accidents to other vessels that, with it all, were inevitable: *The Java*, 14 Wall.

Hence, where such a steamship pursuing in such a case such a channel, with the utmost care, had occasion to cross at an acute angle the stern of a large school-ship that stood high out of water (so obstructing view), and thus struck and injured a small schooner that drifting along on the other side of the school-ship, emerged suddenly at its stern—the steamship not having before seen the schooner, nor the schooner the steamship—*held* that the steamship was not responsible; the more especially as the schooner which was going out of port had just cast away her tug, was drifting along with the tide, and having all her hands engaged in hoisting sail, had no sails set so as to make her specially visible, nor any lookout to see ahead: *Id.*

ASSAULT AND BATTERY.

Proof in Mitigation.—In an action for assault and battery, the defendant offered to prove, in mitigation of damages, a series of provocations, repeated and continued from day to day; and that every time the parties met, the plaintiff insulted the defendant with most opprobrious language, and to such an extent as to render him wild, excited, frantic and partially insane. Also that the plaintiff had committed a most grievous injury, affecting the domestic relations of the defendant; which was one of the insults with which the latter was taunted. This evidence being objected to, the judge ruled that he would allow the defendant to show anything which took place on the day of the assault, or the day before, but not what took place several days before; as, in that case, the defendant had time for his passions to cool. *Held* that the ruling was erroneous; and a new trial was granted: *Dolan* v. *Fagan*, 63 Barb.

In such a case the jury ought to be permitted to hear the nature and extent of the provocation; to hear and know how much of the beating complained of was, if not deserved, at least caused by the provocation given: *Id.*

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[1] From J. W. Wallace, Esq., Reporter; to appear in vol. 14 of his reports.

[2] From W. C. Webb, Esq., Reporter; to appear in 10 Kansas Rep.

[3] From Hon. O. L. Barbour, Reporter; to appear in vol. 63 of his reports.

[4] From Hon. O. M. Conover, Reporter; to appear in 30 or 31 Wis. Rep.

Each case should be controlled by its own peculiar circumstances The question should be, not how many hours have elapsed since the provocation was given, but whether, in view of the circumstances of the case, the party has had a reasonable time to cool his blood: *Id.*

BANKRUPTCY.

Suit by Assignee—Unlawful Preference.—Suit in chancery by an assignee in bankruptcy to recover the proceeds of goods sold under judgment in a state court against the bankrupt taken by confession when both parties knew of the insolvency. Such a judgment, though taken before the 1st day of June 1867, is an unlawful preference under the 35th section of that act, if taken after the enactment of the Bankrupt Law: *Traders' Bank* v. *Campbell*, 14 Wall.

The proceeds of the sale of the bankrupt's goods being in the hands of one sued as a defendant, another person who had a like judgment and execution levied on the same goods is not a necessary party to this suit, being without the jurisdiction. The rule laid down as to necessary parties in chancery: *Id.*

The proceeds of the sale being in the hands of the bank, though it had given the sheriff a certificate of deposit, the assignee was not obliged to move against the sheriff in the state court to pay over the money to him, but had his option to sue the bank which had directed the levy and sale and held the proceeds in its vaults: *Id.*

The defendant having money received as collections for the bankrupt delivered it to the sheriff, who levied the defendant's execution on it and applied it in satisfaction of the same. This is a fraudulent preference, or taking by process under the act, and does not raise the question whether if the defendant had retained the money it could be set off in this suit against the bankrupt's debt to the defendant: *Id.*

So taking a check from the bankrupt and crediting the amount of the check then on deposit, on the bankrupt's note the day before taking judgment, was a payment by way of preference and therefore void, and does not raise the question of set-off: *Id.*

Preference—Partnership.—Under the statutes of Ohio authorizing chattel mortgages, a seal is not necessary to their validity: *Gibson* v. *Warden*, 14 Wall.

Where one partner, R. M., affixed his name and seal to an instrument whose *testatum* set forth that R. M. & Sons, by R. M., one of the firm, had thereto set their hands and seals," the instrument may be regarded as the deed of all the partners on proof that prior to the execution the others had authorized R. M. to execute the instrument, and after execution, with full knowledge acquiesced in what he had done: *Id.*

The two clauses of the 35th section of the Bankrupt Act, differ mainly in their application to two different classes of recipients of the bankrupt's property or means, that is to say, the first clause is limited to a creditor, a person having a claim against the bankrupt, or who is under any liability for him, and who receives money or property by way of preference; and the second clause applies to the purchase of property of the bankrupt by any person who has no claim against him, and is under no liability for him: *Id.*

BOND.

Delivery in Escrow—Fraudulent Possession by Obligee.—A bond for a deed deposited with a disinterested third party, to be by him held until a certain sum of money is paid and then delivered to the obligee, is an escrow, and until the condition is performed it is a mere scroll and no right of action accrues or can accrue thereon to the obligee: *Roberts* v. *Mullenix*, 10 Kans.

Where possession of a bond so deposited is fraudulently obtained by the obligee and assigned, it passes no right to the assignee as against the obligor: *Id.*

CONFLICT OF LAWS.

Will—Probate in State in which Testator not Domiciled.—A probate in Louisiana of the will of a person who died domiciled in New York is valid until set aside in the Louisiana court, though the order of the surrogate in New York has been reversed in the Supreme Court of that state, on which the Louisiana probate was founded: *Foulke* v. *Zimmerman*, 14 Wall.

A purchaser from the devisee of such will of real estate in Louisiana, while the order of the Louisiana court establishing the will remains in force, is an innocent purchaser, and is not affected by a subsequent order setting aside the will, to which he is not a party: *Id.*

Such an order, founded on a verdict and judgment in New York declaring the will void, obtained by collusion between the devisee under the will and the heirs at law, cannot affect the purchaser from the devisee, made in good faith before such verdict and judgment: *Id.*

CONSTITUTIONAL LAW. See *Judgment.*

Supreme Court of United States—Appeal from Decision of State Court.—Where a decision of the highest court of a state in a case is made on its settled pre-existent rules of general jurisprudence, the case cannot be brought here under the 25th section; notwithstanding the fact that the state has subsequently made those rules one of the articles of its Constitution, and the case be one where if the decision had been made on the Constitution *alone*, a writ of error under the said section might have lain: *Bank of West Tennessee* v. *Citizens' Bank of Louisiana*, 14 Wall.

Sale of Slaves—Recovery of Price.—The Supreme Court of Louisiana ordered judgment for a plaintiff suing on a note given for the price of slaves. Subsequently to this the state of Louisiana ordained as part of its Constitution, "that all contracts for the sale or purchase of slaves were null and void, and that no court of the state should take cognisance of any suit founded upon such contracts, and that no amount should ever be collected or recovered on any judgment or decree which had been, or should thereafter be, rendered on account of any such contract or obligation." On application by the defendant in the suit to supersede and perpetually stay all proceedings on the judgment against him, the Supreme Court overruled the application. The case being brought here under an assumption that it was within the 25th section, *held* that it was not so; and the case was dismissed for want of jurisdiction accordingly: *Sevier* v. *Haskell*, 14 Wall.

Writ of Error to State Courts.—The court reasserts the principle that,

in cases brought here by writs of error to the state courts, it will not entertain jurisdiction if it appears that, besides the Federal question decided by the state court, there is another and distinct ground on which the judgment or decree can be sustained, and which is sufficient to support it: *Kennebec Railroad* v. *Portland Railroad*, 14 Wall.

CONTRACT.

Rescission for Fraud or Misrepresentation—Laches.—Even where there is no long and unexplained delay in bringing suit for the purpose, a contract will not be rescinded on the ground of fraudulent misrepresentation in procuring it, except upon clear and satisfactory proof: *Murphy* v. *Dunning*, 30 or 31 Wis

Where there has been such delay, and the contract has passed into the hands of an innocent holder for value, and the fraud is set up and rescission demanded only after suit brought upon the contract, a finding that such fraud is unproven will not be reversed except upon a *very clear and decided* preponderance of evidence against it: *Id.*

COUNTY.

Fees of Physician attending Prisoners in Jail.—A county is not bound to pay a physician for medical services rendered by him in attending on prisoners confined in the county jail, unless such services were authorized by the county board: *Roberts* v. *The Board of County Commissioners*, 10 Kans.

DEED. See *Husband and Wife; Mortgage.*

Recording Acts—Apply in favor of Titles by Judicial Sales.—The provisions of the Recording Act (R. S. ch. 86, § 25) are applicable in favor of titles made through *judicial* sales and conveyances: *Ehle* v *Brown et al.*, 30 or 31 Wis.

Thus, where a mortgage is foreclosed as against all persons having any title or interest *of record*, and the land sold, and the sheriff's deed duly recorded, a prior unrecorded deed from the last grantee of record to one not made a party to the foreclosure, is void as against the grantee in such sheriff's deed: *Id.*

Recording Acts—In whose Favor they apply.—The protection of the Recording Act (R. S. ch. 86, § 25) which declares an unrecorded deed void as against a subsequent purchaser in good faith and for a valuable consideration whose deed shall be first recorded, is *not* confined to a subsequent purchaser *immediately from the same grantor*, but applies to one who takes from him through mesne conveyances; and it protects him, if a purchaser in good faith, for value, in case the chain of title to him is first on record, although the intermediate grantees were chargeable with bad faith, or paid nothing: *Fallass, Adm'r.*, v. *Pierce and others*, 30 or 31 Wis.

P. mortgaged land to B., and the mortgage was recorded. B. assigned the mortgage to R., and the assignment was *not* recorded. B. then released the land by deed to P. (who knew of the assignment to R.), and this release was recorded; and thereupon P. conveyed to X., a purchaser in good faith, for value, who neglected to record his deed from P. until *after* the assignment to R. and also an assignment from R. to plaintiff's intestate, were recorded; said intestate having taken such assignment in good faith, for value. *Held*, that the deed to X., *if re-*

corded before the assignment of the mortgage, would have prevailed against the mortgage, under the Recording Act; but in the absence of such prior record it does *not* cut off the mortgage: *Id.*

X. having acquired the fee, subject to said mortgage, and being presumptively in possession and liable for taxes subsequently levied, could not take title by tax deed for such taxes unpaid: *Id.*

Two powers of attorney to sell and convey lands situate in this state, were executed in 1852, and were acknowledged respectively before a justice of the peace and a county clerk in Illinois, and were recorded in the proper register's office in this state in 1855 and 1859 respectively; but were without the certificates authenticating the signatures and official character, &c., of said justice and clerk, required by § 10, ch. 59, R. S., 1849. *Held*, that under § 105, ch. 137, R. S., and § 1, ch. 272, Laws of 1864 (2 Tay. Sts. 1619, § 159), the record of a deed executed in pursuance of such warrants of attorney and otherwise duly recorded, must be held in all legal proceedings *primâ facie* a valid record, binding purchasers like any other recorded deed: *Id.*

An instrument in writing, under hand and seal, but without a subscribing witness or acknowledgment, as required by the Revised Statutes, is insufficient to convey real estate, and void as against a purchaser or encumbrancer: *Roggen* v. *Avery*, 63 Barb.

EVIDENCE. See *Mortgage.*

HIGHWAY.

Liability of Town for Insufficiency of.—The "insufficiency or want of repairs" in a highway which renders a town liable for injuries resulting therefrom (R. S., ch. 19, § 120), exists wherever the road is not a reasonably *safe* and *convenient* one, in view of the amount and character of the travel thereon, the nature of the country through which it runs, &c.: *Wheeler* v. *The Town of Westport*, 30 or 31 Wis.

The question whether the highway, at the time and place of the injury complained of, was insufficient or out of repair, is one of fact for the jury, under proper instructions: *Id.*

At a certain point in a highway whose general width was less than fifty feet, a strip of land nearly or quite rectangular projected into the general line of the highway on one side to a depth of from fourteen to twenty feet; and there was a line of boulders from one to two feet high along the three sides of the strip adjoining the road. The travelled track ran close to these boulders on all three sides of said strip, its direction being twice changed abruptly to conform thereto. At a distance of *nine* feet from said row of boulders, on the other side of the travelled track, the road was made impassable by deep gullies. The highway was considerably travelled, was over an open prairie, and might easily have been made passable in its whole breadth of thirty feet along said projecting strip; and the strip itself might have been condemned, and the road opened over it: *Held*, That upon these facts the jury might well find the road insufficient: *Id.*

Plaintiff's general acquaintance with the obstruction causing the injury will not *necessarily* prevent his recovery, if, under the circumstances, he might still, in the exercise of ordinary prudence, have been unaware of his proximity to it: *Id.*

Plaintiff was knowingly walking on the grass outside of the travelled

track, within a foot or eighteen inches thereof, and had been so walking for some distance before encountering the sharp angle of the line of boulders aforesaid, over which he stumbled and was injured. He lived on the road, about half a mile distant, and was familiar with it and with the situation of the boulders. It was a rather dark night; the boulders were not visible; the travelled track was wet and sticky. He was a physician, and had been called out to visit a sick person, and was walking close by the side of and conversing with the messenger who came for him, who was walking on the track leading a horse; and he testified that he was not thinking of these stones when he came upon them: *Held*, that upon these facts the court did not err (as against the town) in submitting to the jury the question of contributory negligence: *Id.*

Husband and Wife.

Acknowledgment of Instruments by Married Woman.—The Act of the Legislature of April 11th 1849 (Laws, ch. 375, § 3) which provides that any married woman may convey real estate "in the same manner, and with the like effect, as if she were unmarried," repeals, as to married women and their separate estates, the provisions of the Revised Statutes requiring a private examination, apart from their husbands, upon their acknowledgment of the execution of conveyances: *Richardson* v. *Pulver*, 63 Barb.

A married woman, therefore, having a power of appointment over lands, of which the legal title is vested in a trustee, may execute an instrument, desiring the trustee to execute a conveyance of the premises to her, in pursuance of a power contained in the trust deed; and may legally acknowledge the execution of such instrument in the usual form, without any private examination: *Id.*

The validity of the execution of such a request to the trustee is to be tested by the form of acknowledgment at that time requisite, for married women: *Id.*

The claim that the acknowledgment of such an instrument should be in accordance with the Revised Statutes, is at most based upon an inchoate right, and the repealing statute is valid against it: *Id.*

Purchase of Property by Wife from Husband.—A married woman may purchase personal property with her own money from her husband, and if a subsequent creditor of her husband should cause such property to be seized in execution to pay her husband's debts, she may replevy the same from the officer: *Faddis* v. *Woolomes*, 10 Kans.

Internal Revenue Laws.

Removal of Spirits.—Parties have a right to enter into a stipulation waiving a jury in the District Court, and to submit their case to the court upon an agreed statement of facts, independent of any legislative provision on the subject: *Henderson's Distilled Spirits*, 14 Wall.

Where a forfeiture is made absolute by statute a decree of condemnation relates back to the time of the commission of the wrongful acts, and takes effect from that time, and not from the date of the decree. Accordingly where a removal of distilled spirits from the place where distilled, with intent to defraud the United States of the tax thereon, was alleged as a ground for the forfeiture of the spirits, it was *held* that neither the subsequent payment of the taxes nor the fact that the claimant was an

innocent purchaser, without notice of the wrongful acts of the antecedent owner, constituted a defence to the charge: *Id.*

A removal of distilled spirits from the place where distilled to a bonded warehouse of the United States, if made to secure the payment of the tax to the government, is a lawful act, but if made with intent to defraud the United States of the tax, the act of removal is illegal, and the spirits removed are subject to forfeiture. A removal of the spirits from the place where distilled to the bonded warehouse is not inconsistent with and may be a part of a scheme to defraud the United States of the duties: *Id.*

Judgment.

Record of Court of another State.—A record of a judgment rendered in Connecticut, properly authenticated under the Act of Congress of May 26th 1790 (1 U. S. Stat. at Large 122), by having the proper certificates and signatures of the clerk and judge and the seal of the court appended thereto, will be presumed *primâ facie* to be valid and binding, and entitled to full faith and credit in Connecticut and elsewhere, although the judgment may not be signed by the judge of the court rendering it; and in general, whenever a judicial record which would be valid and binding, if made in this state, comes properly authenticated from another state, it will be presumed to be valid and binding in the state from which it comes until the contrary is shown; and until the contrary is shown, full faith and credit will be given to it here: *French* v. *Pease et al.*, 10 Kans.

Legal Tender Notes.

Value at Different Times—Damages assessed in.—A cargo was shipped from Canada to New York, October 7th 1864, when gold was 101 per cent. above legal tender notes of the United States. The cargo was wrecked soon after, on the Hudson. On libel in the admiralty at New York, and on appeal from the District Court, the Circuit Court, on the 26th March 1870, when gold was only 12 per cent. above notes, gave the libellants a decree for the value in gold of the cargo on the day and at the place of shipment, converting that value, at the same time, into legal tender notes, at the rate at which such notes stood as compared with gold on the day of shipment; that is to say, when gold was 101 per cent. above legal tender notes, or, in other words, when it required $201 legal tender notes to buy $100 of gold. On appeal to this court (the difference between gold and notes having now sunk to about 9 per cent.), *held* that this decree was right: *The Vaughan and Telegraph*, 14 Wall.

Mandamus.

To compel Performance of Public Duty.—*Mandamus* will not lie at the instance of a private citizen to compel the performance of a purely public duty: *Bobbett et al.* v. *The State*, 10 Kans.

Such a suit must be brought in the name of the state, and the county attorney and the attorney-general are the officers authorized to use the name of the state in legal proceedings and to enforce the performance of public duties: *Id.*

Where a private citizen sues out a *mandamus* he must show an interest specific and peculiar in himself, and not one that he shares with the community in general: *Id.*

Interest of Petitioner for.—An allegation that plaintiffs are qualified voters and freeholders of a township, discloses no such peculiar and specific interest as will sustain a *mandamus* to compel the county board to order, in such township, an election on the question of issuing bonds: *Turner et al.* v. *The Board of County Commissioners*, 10 Kans.

MORTGAGE. See *Bankruptcy; Deed.*

Of Chattels—Filing in proper Place—Evidence.—When a chattel mortgage is not filed in the proper town, *it seems* that a copy thereof certified by the clerk of such town is not competent evidence to show title in the mortgagee as against a creditor of the mortgagor: *Evans* v. *Sprague*, 30 or 31 Wis.

But an objection to such evidence must be *specific*, showing the precise defect relied on, or its admission will not be error: *Id.*

MUNICIPAL CORPORATION.

Negotiable Securities.—When a corporation has power under any circumstances to issue negotiable securities the *bonâ fide* holder has a right to presume that they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper: *Lexington* v. *Butler*, 14 Wall.

A municipal corporation on a suit against it for bonds issued to a railroad, set up that the plaintiff had notice of certain proceedings, which (as the plea alleged) destroyed the plaintiff's right to sue. The plaintiff replied, denying the notice. The city demurred to the replication. *Held*, that the city thus admitted that he had no notice: *Id.*

A suit upon a coupon or interest warrant to a bond is not barred by the Statute of Limitations, unless the lapse of time is sufficient to bar also a suit upon the bond: *Id.*

NATIONAL BANKS.

Suits against—Default in Payment of Notes.—A national banking association may be sued in any state, county, or municipal court in the county or city where such association is located, having jurisdiction in similar cases: *Bank of Bethel* v. *Pahquioque Bank*, 14 Wall.

Such an association does not lose its corporate existence by mere default in paying its circulating notes, and upon the mere appointment of a receiver: *Id.*

Such an association may be sued though a receiver have been appointed, and is administering its concerns: *Id.*

The decision of the receiver upon the validity of a claim presented to him for a dividend is not final; the creditor may proceed afterward to have the validity of the claim judicially adjudicated in a suit in a proper state court, against the bank: *Id.*

NEGLIGENCE. See *Highway.*

NEGOTIABLE BOND. See *Municipal Corporation.*

Effect of Assignment—Transfer as Security.—Where the complaint avers that defendant's note and mortgage to a railroad company were sold, assigned and delivered to plaintiffs by such company, and the answer merely alleges that said company never *endorsed over said note* to any person *by writing its name thereon for that purpose*, and that said

company has at all times refused to *endorse* the note, or to do any act which would make it negotiable—this is not a denial of the assignment by the company as alleged in the complaint, nor of the authority of the officers by whom such assignment was made, but merely denies that such assignment was in law an endorsement, and plaintiffs are not put upon proof of the authority of said officers: *Murphy* v. *Dunning*, 30 or 31 Wis.

Crosby v. *Roub*, 16 Wis. 616, and *Bange* v. *Flint*, 25 Id. 544, followed, as to the effect as an *endorsement* of the transfer of a note and mortgage attached to a negotiable bond of a railroad company, which recites that said note and mortgage are transferred as security for such bond, and are transferable only in connection with it: *Id.*

PERJURY.

Materiality of Testimony for the Court.—On a trial for perjury, the materiality of the alleged false testimony is generally a question of law for the court: *State of Kansas* v. *John Lewis*, 10 Kans.

But if left to the jury, and their verdict determines the question of materiality, as the court should have instructed them, no error is done to the substantial rights of the defendant: *Id.*

Where an information charges an offence at a certain time and place, testimony that the defendant was at that time at a remote place, is *primâ facie* material: *Id.*

The failure to enter a plea to an information does not render a subsequent trial so far void that false swearing thereon cannot be perjury: *Id.*

SHIPPING.

Bill of Lading.—A "clean" bill of lading, that is to say a bill of lading which is silent as to the place of stowage, imports a contract that the goods are to be stowed *under* deck: *The Delaware*, 14 Wall.

This being so, parol evidence of an agreement that they were to be stowed on deck is inadmissible: *Id.*

SLAVES. See *Constitutional Law.*

STATUTES.

Inchoate Rights.—Inchoate rights, generally, derived under a statute, are lost by its repeal; unless saved by express words in the repealing statute: *Richardson* v. *Pulver*, 63 Barb.

TAX TITLE.

Deed must show a Sale for Delinquent Taxes—Limitations.—A tax-deed which does not show that the land it purports to convey was sold for delinquent taxes is void upon its face; and where the holder of such a tax-deed has never been in the actual possession of the property which the deed purports to convey, the two years' Statute of Limitations will not run so as to bar an action brought for the purpose of having the deed declared void: *Hubbard* v. *Johnson*, 10 Kans.

TROVER.

Damages.—In an action for trover and conversion, the defendant cannot prove in mitigation of damages, that the plaintiff has regained possession of the property And it is erroneous to charge that it is a case for nominal damages only. If the plaintiff is not entitled to recover the full value of the property, he is at least entitled to recover the actual damages he

has sustained by being deprived of the use of the property, and the expense incurred in regaining possession: *Sprague* v. *McKinzie*, 63 Barb.

TRUST AND TRUSTEE.

Trust as to Real Estate.—In Kansas no express trust concerning real estate can be created except by writing: *Knaggs* v. *Mastin*, 10 Kans.

UNITED STATES COURTS. See *Constitutional Law.*

Jurisdiction—Citizenship of Parties—Negotiable Paper.—The restriction of the 11th section of the Judiciary Act giving original jurisdiction to the Circuit Courts, but providing that they shall not "have cognisance of any suit to recover the contents of any promissory note or *other chose in action*, in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made," does not apply to cases transferred from state courts under the Act of March 2d 1867, giving to either party in certain cases a right to transfer a suit brought in a state court where either makes affidavit, &c., "that he has reason to believe, and does believe, that from prejudice or local influence he will not be able to obtain justice in such court:" *City of Lexington* v. *Butler*, 14 Wall.

Independently of this, negotiable paper (within which class coupons to municipal bonds, if having proper words of negotiability, fall) is not regarded as falling within the exception: *Id.*

USURY.

Note drawing Interest until paid—Effect of Payment of additional Sum for Extension of Time.—Where a note draws interest until paid, at the highest legal rate, an agreement by the maker to pay any additional sum for an extension is usurious: *Meiswinkle* v. *McCullough et al.*, 30 or 31 Wis.

While such agreement is *executory* as to both parties, it is void as to both, and does not discharge a surety on the note: *Id.*

Even where the stipulated excess has been *paid* by the maker (the amount being recoverable under our statute), *it seems* that the promise to extend is void, as being without consideration, and that the surety is not discharged: *Id.*

To whom the Laws will apply—Agreement by Third Party to pay Extra Interest.—Usury laws are designed to protect the *borrower* from being obliged to pay more than the amount limited thereby for the loan or forbearance for money; and not to prevent the lender from receiving such excess from third parties, who voluntarily undertake to pay it: *McArthur* v. *Schenck et al.*, 30 or 31 Wis.

A. proposes to buy of B. a farm for $2500 cash, if he can borrow the money, and applies to C. therefor. C. offers, through B. as his agent, to loan the amount to A. for thirty dollars in excess of the highest legal interest; and upon A. refusing to borrow on those terms, B. agrees to pay the thirty dollars, or to accept for the land $2470; and A. thereupon receives from C. and pays to B. the last-named sum, and gives his note and mortgage to C. for $2500, at the highest legal rate of interest: *Held*, in an action by C. against A., that there is no contract on A.'s part to pay usurious interest, and that the note [illegible]

Id.