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Bills and Notes

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employer may be inferred.[13] In the case of *Gulf Refining Company v. Shirley*[14] it was conceded that the station operator was the agent of the company; the defense was that there was no authority, express or implied, for the agent to employ a sub-agent for whose negligence Gulf would be liable. Judgment for the plantiff for injuries inflicted by the negligent act of the filling station agent's son, who was helping in the business, was reversed and rendered on the grounds that there was no express authority to employ servants for whose torts the company would be liable and that there was no evidence from which such authority could be implied. Factors bearing on implied authority were said to be magnitude of the business, number of men necessary to operate it, the customs or usages of the business, and the previous course of dealings between the agent and his principal. The court stated that it is not enough to show that the servant of the agent is performing part of the services which the agent was employed to perform.

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BILLS AND NOTES

Oklahoma. In an action on several promissory notes, one of the defenses upon which defendant relied was that the notes were tainted with usury. Defendant admitted execution of the notes for value but testified that plaintiff had exacted by way of bonus for such loans a conveyance of certain oil well interests in Texas, which bonus made the transaction usurious. The plaintiff testified that he had received the oil well interests as a gift and not as compensation for the loan. *Held,* under the testimony of the plaintiff, the Texas oil property was transferred as a gift and not as compensation for the loan of money. The burden rested upon

[13] See 35 Am. Jur., *Master and Servant,* sec. 540.

[14] 99 S. W. 2d. 613 (Tex. Civ. App. 1936), *writ of error dismissed.*

the defendant to show "that the notes were paid, or that the plaintiff had charged a greater premium for the use of money than the law allows."[1]

Generally, the penalty for exacting and receiving usurious interest is governed by state statute. Some usury statutes declare usurious contracts entirely void so that the defense is good as to any liability thereon, while others provide that they shall be void only as to the usurious excess, the entire interest, twice the interest, or thrice the interest. The maximum rate which may be provided by contract in Oklahoma is ten per cent per annum, and the penalty for the charging and receiving of interest above that rate is forfeiture of twice the sum paid, to be recovered in an action for debt or by way of set-off in a suit upon the obligation out of which the usury grew.[2]

There is a suggestion in the principal case that the circumstances surrounding the transaction were unusual in that the borrower gave to the lender valuable property interests wholly without any compensation. Generally speaking, where there is a contemporaneous collateral agreement, wherein as a condition to the making of a loan at an apparently permissible rate of interest, the lender requires the borrower to give or to sell property to him at less than its value, the difference represents interest and will be taken into account in determining whether the transaction is usurious. This is so because few usurious transactions are put in writing. On the contrary, some device or scheme is usually adopted in order to conceal the illegal part of the transaction. Therefore, since these statutes are for the purpose of preventing the exploitation of necessitous borrowers, public policy requires that the courts look through an ingenious scheme and view the actual arrangement made by the parties. The Oklahoma court has generally adopted this policy. The court in *Bean v. Rumrill*[3] said:

[1] Wood *v.* Harris, Okla.———, 203 P. 2d. 710 (1949).

[2] 15 OKLA. STAT. ANN. (Perm. Ed.) §§ 266, 267.

[3] 69 Okla. 300, 172 Pac. 452, 456 (1918). *Accord:* Midland Savings and Loan Co. *v.* Tuohy, 69 Okla. 270, 170 Pac. 244 (1918); Munn *v.* Mid-Continent Motor Securities Co., 100 Okla. 105, 228 Pac. 150 (1924).