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Usury -- Deduction of Expenses Incidental to the Loan

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a searcher is affected with all the knowledge that inquiry into the record would have revealed.[25]

The principal case seems to have gone too far. It proposes to reward the searcher in proportion to his ability to imply. And strangely enough, there is good authority in Illinois to the contrary.[26] In addition, the purpose of the recording statutes is to give constructive notice of a lien and not *prima facie* evidence of one. The likelihood of fraud and the insecurity which would arise under too liberal a view, is exactly what the statutes were passed to prevent. On its facts, it is believed that the instant case was correctly decided. Actually, no rights of a third party had intervened.

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Usury—Deduction of Expenses Incidental to the Loan.

In addition to the maximum legal rate of interest plaintiff building and loan association deducted two per cent from the loan to cover cost of investigating the borrower's credit. *Held,* not a scheme to evade the usury statutes, since there was no evidence to contradict the contention that the amount charged was actually expended in a bona fide way as compensation for the services rendered.[1]

It is generally conceded that deduction by the lender for expenses and services incidental to the loan does not render the transaction usurious even though the total amount received exceeds the legal interest rate.[2] This is true whether the expenses are already in-

[25] Royster v. Lane, 118 N. C. 156, 245 S. E. 796 (1896); Valentine v. Harrison, 193 N. C. 825, 138 S. E. 308 (1927); West v. Jackson, 198 N. C. 693, 153 S. E. 257 (1930) (the question is whether a careful searcher would be put upon inquiry).

[26] Grundies v. Reid, *supra* note 23; Kennedy v. Merriam, 70 Ill. 228 (1873); Garrison v. People, 21 Ill. 535 (1859); Spreyne v. Garfield Lodge No. 1, *supra* note 24 (charter granted to United Slavonian Benevolent Society does not tend to prove the corporate existence of Garfield Lodge No. 1 of United Slavonian Benevolent Society).

[1] Taylor v. Consolidated Loan and Savings Co., 162 S. E. 391 (Ga. App. 1932).

[2] Iowa Savings and Loan Association v. Heidt, 107 Iowa 297, 77 N. W. 1050, 70 Am. St. Rep. 197, 43 L. R. A. 689 (1899) (expenses incurred by lender in recording the mortgage, procuring the abstract, and examining the title); Ashland National Bank v. Conley, 231 Ky. 844, 22 S. W. (2d) 270 (1929) (examining title, procuring insurance, and appraising property). Note (1921) 21 A. L. R. 797; Note (1927) 53 A. L. R. 743; Note (1928) 63 A. L. R. 823. Deduction of expenses incidental to the loan has statutory recognition in North Carolina as to building and loan associations and land and loan associations. Building and loan: N. C. CODE ANN. (Michie, 1931) §5183; land and loan: N. C. CODE ANN. (Michie, 1931) §5207 (h). There seems to be no such provision for savings and loan associations.

curred[3] or are anticipated.[4] But such charges must not be unreasonable or excessive.[5] They must be for services actually rendered and may not be employed as a mere device to evade the usury statutes.[6] The question seems ultimately to be one of *bona fides*,[7] since intent is an essential element of an usurious transaction.[8] It is generally held that the intent must exist in both parties,[9] but there is good authority to the contrary.[10]

As to what constitutes a valid incidental charge, it is held that a loan is not rendered usurious by the payment of a commission to the

[3] Brown v. Robinson, 224 N. Y. 301, 120 N. E. 694 (1918) (expenses incurred in obtaining insurance for borrower on contingent interests); Matthews v. Georgia State Savings Association, 132 Ark. 219, 200 S. W. 130, 21 A. L. R. 789 (1918) (attorney's fee for examining title and travelling expenses); Blanchard v. Hoffman, 154 Minn. 525, 192 N. W. 352 (1923) (services rendered in managing property and removing encumbrances therefrom). And see Stewart v. G. L. Miller & Co., 161 Ga. 919, 132 S. E. 535 (1926). (Underwriting agreement with provision for supervision of building construction, etc.).

[4] Comstock v. Wilder, 61 Iowa 274, 16 N. W. 108 (1883) (examination of property); Daley v. Minnesota Loan and Investment Co., 43 Minn. 517, 45 N. W. 1100 (1890) (preparation of papers, examination of abstract, and investigation of property); Fisher v. Adamson, 47 Utah 3, 151 Pac. 351 (1915) (looking up securities).

[5] Mayfield v. British and American Mortgage Co., 104 S. C. 152, 88 S. E. 370 (1916) (preparing abstract of title); Cooper v. Ross, 232 Mich. 548, 205 N. W. 592 (1925) (bonus charge); London Realty Co. v. Riordan, 207 N. Y. 264, 100 N. E. 800, Ann. Cas. 1914C 408 (1913) (charge of ten dollars on a loan of sixty-five dollars).

[6] Haines v. Commercial Mortgage Co., 200 Cal. 609, 254 Pac. 956, 53 A. L. R. 725 (1927) (broker's fee of three percent which could not be allocated to any particular item for which the lender could legitimately charge); Horkan v. Nesbitt, 58 Minn. 487, 60 N. W. 132 (1894) (pretended services in drafting papers and examining property); Sanders v. Nicolson, 101 Ga. 739, 28 S. E. 976 (1897) (supposed "professional services"); Rowland v. Building and Loan Association, 116 N. C. 878, 22 S. E. 8 (1895) ("dues," "fines," and "fees"); Hollowell v. Building and Loan Association, 120 N. C. 286, 26 S. E. 781 (1897) ("dues," "fines," and "charges"); Pugh v. Scarboro, 200 N. C. 59, 156 S. E. 149 (1930) (bonus); Detweiler v. Foreman, 120 Neb. 780, 235 N. W. 330 (1931) (commission); Babcock v. Olhasso, 109 Cal. App. 534, 293 Pac. 141 (1930) (bonus).

[7] Weaver Hardware Co. v. Solomovitz, 98 Misc. Rep. 413, 163 N. Y. Supp. 121 (1917).

[8] Flax v. Mutual Building and Loan Association, 198 Mich. 676, 165 N. W. 835 (1917); Irby v. Commercial National Bank, 208 Ala. 617, 95 So. 28 (1923); Equitable Trust Co. v. Lumber Co., 41 F. (2d) 60 (N. D. Idaho 1930). Intent will be inferred from a written instrument. MacRakan v. Bank, 164 N. C. 24, 80 S. E. 184 (1913). But intent to take an usurious amount without actually doing so cannot be usury. Low v. Sutherlin, Barry & Co., Inc., 35 F. (2d) 443 (C. C. A. 9th, 1929).

[9] Continental Savings and Building Association v. Wood, 33 S. W. (2d) 770 (Tex. Civ. App. 1930); Brown v. Robinson, *supra* note 3; Salvin v. Myles Realty Co., 227 N. Y. 51, 124 N. E. 94, 6 A. L. R. 581 (1919).

[10] Elba Bank and Trust Co. v. Davis, 212 Ala. 176, 102 So. 117 (1924); First National Bank v. Phares, 70 Okla. 255, 174 Pac. 519, 21 A. L. R. 793 (1918).

borrower's agent[11] or to an individual broker.[12] The same applies to the lender's agent if the lender has no knowledge of or interest in the commission.[13] Courts do not agree where the lender does have such knowledge,[14] or where the interest in the commission does not form a part of the consideration for the loan.[15] Bona fide charges for services actually rendered in examining and appraising the security offered for the loan are held valid,[16] as are like charges for travelling expenses incurred in connection therewith,[17] procuring the money for the loan,[18] investigation of the property,[19] examination of the bor-

[11] Richardson v. Shattuck, 57 Ark. 347, 21 S. W. 478 (1893); Webb v. Southern Trust Co., 227 Ky. 70, 11 S. W. (2d) 988 (1928). It seems that the North Carolina Court holds even this usurious if the lender had knowledge of the commission charged. Nance v. Welborne, 195 N. C. 459, 142 S. E. 477 (1928); Patterson v. Blomberg, 196 N. C. 433, 146 S. E. 66 (1929).

[12] Hatcher v. Union Trust Co., 174 Minn. 241, 219 N. W. 76 (1928); Union Central Life Insurance Co. v. Edwards, 219 Ky. 748, 294 S. W. 502 (1927).

[13] Friedman v. Katz, 246 Mich. 296, 224 N. W. 325 (1929); Gantzer v. Schmeltz, 206 Ill. 560, 69 N. E. 584 (1904); Brigham v. Myers, 51 Iowa 397, 1 N. W. 613, 33 Am. Rep. 140 (1879). But Nebraska and a few other jurisdictions take a strict view and hold that such a charge renders the loan usurious whether the lender had any knowledge of the commission or not, on the ground that the principal is bound by the acts of his agent. Hare v. Winterer, 64 Neb. 555, 90 N. W. 544 (1902); Joslin v. Miller, 14 Neb. 91, 15 N. W. 214 (1883); Condit v. Baldwin, 21 N. Y. 219, 78 Am. Dec. 137 (1860); Robinson v. Blaker, 85 Minn. 242, 88 N. W. 845, 89 Am. St. Rep. 541 (1902); Dalton v. Weber, 203 Mich. 455, 169 N. W. 946 (1918). Citizens' Bank v. Heyward, 135 S. C. 190, 133 S. E. 709 (1925) (agreement of borrower to pay 8% interest and additional 2% to president of bank).

[14] The question here seems to be whether such knowledge amounts to an authorization or ratification of the commission. That question is determined in the affirmative where there is an understanding between the lender and the agent that the latter shall get his compensation from the borrower. Clark v. Havard, 111 Ga. 242, 36 S. E. 837, 51 A. L. R. 499 (1900); Texas Loan Agency v. Hunter, 13 Tex. Civ. App. 402, 36 S. W. 399 (1896); Brown v. Johnson, 43 Utah 1, 134 Pac. 590, 46 L. R. A. (N. S.) 1157, Ann. Cas. 1916C 321 (1913). The same is true where the agent shares the commission with the lender. Williams v. Rich, 117 N. C. 235, 23 S. E. 257 (1895); Umphrey v. Auyer, 208 Mich. 276, 175 N. W. 226 (1919). See (1928) 7 N. C. L. REV. 332 for a discussion as to the effect of sharing the commission with the lender.

[15] Eslava v. Crampton, 61 Ala. 507 (1878); Wilhoit v. Flack, 123 Ark. 619, 185 S. W. 460 (1916); Grieser v. Hall, 56 Minn. 155, 57 N. W. 462 (1894).

[16] Ashland National Bank v. Conley, *supra* note 2; Daley v. Minnesota Loan and Investment Co., *supra* note 4; (1930) 18 KY. L. J. 401.

[17] Smith v. Wolf, 55 Iowa 555, 8 N. W. 429 (1881); Matthews v. Georgia State Savings Association, *supra* note 3.

[18] Riker v. Clark, 54 Vt. 289 (1881) (expense incurred from payment of interest by the lender on a loan from a third person); Stevens v. Staples, 64 Minn. 3, 65 N. W. 959 (1896) (loss incurred by lender in changing his investments in order to secure a loan from a third person).

[19] Comstock v. Wilder, 61 Ia. 274, 16 N. W. 108 (1883); Liskey v. Snyder, 56 W. Va. 610, 49 S. E. 515 (1904).

rower's title,[20] removal of encumbrances from the security offered,[21] recordation of the mortgage,[22] exchange,[23] attorney's fee for collection, [24] preparation of papers,[25] and obtaining of contracts, such as insurance, which are made a condition precedent to the loan.[26] A provision that the borrower pay the taxes on the land is upheld,[27] but courts are inclined to disagree as to taxes on the mortgage or the debt.[28]

The abuse of the service charge has in some instances occasioned legislative action, notably in the field of the small loan. Thus, many states, including the jurisdiction of the principal case,[29] have enacted the Uniform Small Loan Law,[30] providing for a fair return to one

[20] Matthews v. Georgia State Savings Association, *supra* note 3; Iowa Savings and Loan Association v. Heidt, *supra* note 2.

[21] Testera v. Richardson, 77 Wash. 377, 137 Pac. 998 (1914); Wacasie v. Radford, 142 Ga. 113, 82 S. E. 442 (1914).

[22] Iowa Savings and Loan Association v. Heidt, *supra* note 2; Domboorajian v. Woodruff, 239 Mich. 1, 214 N. W. 113 (1927); Gault v. Thurmond, 39 Okla. 673, 136 Pac. 742 (1913).

[23] Tipton v. Ellsworth, 18 Idaho 207, 109 Pac. 134 (1910); Smith v. Champion, 102 Ga. 92, 29 S. E. 166 (1897).

[24] Morris Plan Bank v. Whitman, 150 Atl. 610 (R. I. 1930).

[25] Daley v. Minnesota Loan and Investment Co., *supra* note 4; Pivot City Realty Co. v. State Savings and Trust Co., 162 N. E. 27 (Ind. App. 1928); Mayfield v. British American Mortgage Co., *supra* note 5.

[26] Brown v. Robinson, *supra* note 3; Hance Hardware Co. v. Denbigh Hall, Inc., 152 Atl. 130 (Del. Ch. 1930).

[27] Kidder v. Vandersloot, 114 Ill. 133, 28 N. E. 460 (1885); Detroit v. Board of Assessors, 91 Mich. 78, 51 N. W. 787, 16 L. R. A. 59 (1892). *Contra:* Dawson County State Bank v. Temple, 116 Neb. 727, 218 N. W. 737 (1928). Some cases draw the distinction as to who has the legal title. Union Mortgage Bank and Trust Co. v. Hagood, 97 Fed. 360 (C. C. D. S. C. 1897); Dwyer v. Weyant, 116 Neb. 485, 218 N. W. 140 (1928); (1926) 5 NEB. L. B. 431; (1928) 41 HARV. L. REV. 405.

[28] Held usurious: Vandervelde v. Wilson, 176 Mich. 185, 142 N. W. 553 (1913); Meem v. Dulaney, 88 Va. 674, 14 S. E. 363 (1890). Held not usurious: Lassman v. Jacobson, 125 Minn. 218, 146 N. W. 350, 51 L. R. A. (N. S.) 465, Ann. Cas. 1915C 774 (1914); Moore v. Lindsey, 61 Misc. 176, 114 N. Y. Supp. 684 (1908).

[29] GA. CODE ANN. (Michie, 1926) §§1170 (61) *et seq.* The court in the principal case held the statute inapplicable, probably because of the amount of the loan, though such does not appear.

[30] Under this law the lender of $300 or less must have a license from the state, for which he posts bond. He is allowed to charge 3½% per month. ARIZ. REV. CODE (1928) §§1989 *et seq;* CONN. GEN. STAT. (1930) §§4066 *et seq;* ILL. STAT. ANN. (Callaghan, 1924) Ch. 74 §§27 *et seq;* IND. ANN. STAT. (Burns, 1926) §§9777 *et seq;* IOWA CODE (1931) §§9410 *et seq;* MD. CODE ANN. (Bagby, 1924) Art. 58A; PA. STAT. (West, 1920) §§14099 *et seq;* VA. CODE ANN. (Michie, 1930) §§4168 *et seq;* GA. CODE ANN. (Michie, 1926) §§1770 (61) *et seq;* W. VA. CODE (1931) Art 7, §§1 *et seq.* Tennessee's similar "loan shark law" allows service charges. TENN. CODE (1932) §§6721 *et seq.* Ohio's pawnbroker's law confines service charges to storage and allows 3½% monthly for this. OHIO CODE ANN. (Throckmorton, 1929) §6339-3. In connection with these statutes it is interesting to take note of the well known Household Finance

who lends three hundred dollars or less without the necessity of resorting to the subterfuge of service charges, which are allowed under no pretext. Along the same line, but applying to any size of loan, except as limited by the amount of the bank's capital stock, Michigan's Revised Banking Code of 1929[31] includes a provision allowing a service charge on a graduated scale according to the amount of the loan. The only substantial difference between the two laws lies in the method employed of reaching the same desired result. The small loan law allocates a fixed percentage to the loan by way of interest. The Michigan law allocates a variable amount to the loan by way of service charges. Both are to be commended as fairly successful restrictive legislation.

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Workmen's Compensation—Disability Resulting from Combination of Accident and Disease.

Plaintiff appeals from the decision of the Compensation Commissioner, which denied him an award for arthritis causing disability one month after he suffered a severe injury when a loaded coal car, in the mine in which he was working, fell on him. On the undisputed facts the court reversed the Commissioner's order, granting plaintiff all reasonable inferences in his favor.[1]

The right to appeal from a decision of the Industrial Commission is for the most part regulated by statute. But it has been generally

Corporation, incorporated in Delaware in 1925, and engaging in the business of small loans secured by chattel mortgages in states which have enacted the Uniform Small Loan Law or similar legislation legalizing this business. It has approximately 150 offices, including Household Finance Corporation of New York, Household Finance Corporation of America (Del.), and Small Loans Corporation of Illinois, wholly owned subsidiaries. MOODY'S MANUAL, BANKS AND FINANCE (1931) 1398. As of March 31, 1932 it had resources of $49,118,-187. MOODY'S MANUAL, BANKS AND FINANCE, Advance Parts (1932) 1481. For a review of the Uniform Small Loan law see Note (1923) 23 COL. L. REV. 484.

[31] " . . . the bank shall have power to charge for a loan made pursuant to this section one dollar for each fifty dollars or fraction thereof loaned for expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker, or surety and for drawing and taking acknowledgement of necessary papers or other expenses incurred in making the loan; no charge shall be collected unless a loan shall have been made and in no case shall such charge exceed fifteen dollars." MICH. COMP. LAWS (1929) §11927.

[1] Goble v. State Compensation Commissioner, 162 S. E. 314 (W. Va. 1932).