usuriously transferred by the payee or indorsee, is valid against the maker, has been variously decided. Lord Kenyon once held that such holder would be entitled to recover: *Parr* v. *Eliason*, 1 East 92; and in the case of *Campbell* v. *Read*, Martin & Yerg. R. 392, it was decided, that a note thus usuriously indorsed is valid as against the maker, in the hands of a holder *in good faith*. By Statute of Michigan, a holder of a bill or note in good faith, for valuable consideration, without notice and before maturity, shall be entitled to recover as if such usury had not been alleged and proved. This is a wise and equitable provision, working great benefit. New York repealed a similar provision by the amendment of 1837. There are but few cases in which a bill or note is void in the hands of an innocent indorsee for valuable consideration; such cases are, when the consideration in the instrument is money won at play, or it be given for a usurious debt. Notes given by a corporation, in violation of a statute, are void, even in the hands of an innocent holder: *Root* v. *Godard*, 3 McLean 102. In Mississippi a note was held to be void, where the signature was procured by fraudulent representations: *Dunn* v. *Smith*, 12 S. & M. 602, The payee of a note may transfer it at a discount exceeding the legal rate of interest; but where an indorser buys a note (valid in its inception), he can recover against the indorser only the sum paid with interest, though the full amount may be recovered against the maker: 15 Johns. R. 49; 4 Hill 472. If a usurious note be given up and cancelled, on the promise of the debtor to pay the original debt, with lawful interest, such promise would be binding; or if, when the interest is due and payable, or constitutes a then subsisting debt, the debtor ask to retain it, and agrees to pay interest upon the amount at the legal rate, the agreement is not usurious. Though a note be valid between the original parties, yet the indorser cannot sue the maker, if the indorsement was on an usurious consideration: Story on Bills 189; 1 Peters R. 37.

4. *Of usury in parties procuring loans.* Whether a bonus or premium is in the nature of a gift or promise at the time of the transaction, is a question of fact; if the undertaking assumes distinctness enough to become a contract for additional interest, the penalties of the usury law would attach.

A creditor in loaning money is not allowed to receive a compensation as for services in procuring the loan, nor make a condition of a loan that the borrower shall purchase a certain article; and whether the contracting parties sought to evade the statute is a question for the jury: Cowen's Treat. 63; 1 Johns. Ch. 6.

In New York city, very large business is done, by brokers in procuring money loans, and the question often arises what transactions are usurious. It is clear, that if a borrower pays a broker commission for his services in effecting a loan, in addition to paying lawful interest to the lender, it does not render the loan usurious, provided, the broker acts as agent merely and is not the person making the loan, and the lender receives no part of the commission: *Condit* v. *Baldwin*, 21 N. Y. 219, 21 Barb. 181; On the other hand, if the loan was in fact made by the person pretending to act as broker, his receiving a commission beyond simple interest, would constitute usury.

If a party guarantee or indorse paper for two months at two and a half per cent., it is not usurious (where there is no loan), for a man may sell his credit as well as goods and lands, dealing fairly, at any price he can get: *Reed* v. *Smith*, 9 Cow. 647; *Moore* v. *Howland*, 4 Denio 264; 1 N. Y. Legal Obs. 107.

If A. loans money to B. on simple interest, and on paying the same, B. expresses gratitude by a gift to A., either of money or goods, it would not be usurious; but if it be given in accordance with a previous promise, usury would attach.

The weight of authority recognises the principal, that none but parties or privies to an usurious contract can take advantage of it; and to avoid a security it must be shown that the agreement was usurious from its origin: *Nichols* v. *Fearson*, 7 Peters R. 103; *Rice* v. *Welling*, 5 Wend. 597; *Gardner* v. *Flagg*, 8 Mass. 101

Usury, though commonly an unconsionable defence, is a legal one, and if proved, the courts must sustain it; if impolitic, the legislature alone can annul or repeal it. It is a defence which is not encouraged by the New York courts; and since the enactment of Laws of 1850, neither a corporation nor a receiver of one can maintain an action to recover back usurious premiums paid by it.—*American Law Register.*

(To be Continued.)

UPPER CANADA REPORTS.

COMMON PLEAS.

(Reported by S. J. VanKoughnet, Esq., M.A., *Barrister-at Law, Reporter to the Court.)*

Baxter v. Baynes.

Unstamped promissory note—27 & 28 Vic., ch. 4—Pleading.

Where the defendant neither denied the making of the note sued on, nor pleaded the absence of a stamp, *Held*, that a defence on the latter ground could not be urged.

Semble, 1. That the only mode of raising the defence of the want of a legal stamp is by a plea denying the *fact*. 2. That such plea would be displaced by evidence shewing that the instrument had been properly stamped at the time of signature, and initialed by the maker, but had been rubbed off, defaced, or improperly removed by some one else; that, on these facts being shewn, the note would not be void, and that the defendant would be relieved from the penalty under the act.*

[C. P., H. T., 1865.]

* That part of the case which bears upon the late Stamp Act only is given, the remainder not being of general interest.—Eds. L. J.