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Recent Trial Court Decisions

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(Editor's Note.—It is intended in each issue of the Record to note interesting current decisions of all local Trial Courts, including the United States District Court, State District Courts, the County Court, and the Justice Courts. The co-operation of the members of the Bar is solicited in making this department a success. Any attorney having knowledge of such a decision is requested to phone or mail the title of the case to Victor Arthur Miller, who will digest the decisions for this department. The names of the Courts having no material for the current month will be omitted, due to lack of space.)

In the District Court

DIVISION 3

HENLEY A. CALVERT, JUDGE

L. M. Dunlavy, Plaintiff, v. Earl M. Howland, T. H. Taylor, H. H. Levine and Harry Rosenthal, Defendants.
No. 101018.

Suit by plaintiff against defendants for conversion of personal property. Defendants justify the taking of the property by virtue of a mortgage executed by plaintiff to secure the payment of a note for \$301.00, also executed by plaintiff, payable to one of the defendants. The plaintiff by replication pleads that the \$301.00 note was given for a loan of less than \$300.00, and violated the usury statute. Defendants then filed an amended answer pleading that the note was given in extension of a note for \$500.00 and mortgage theretofore executed by the plaintiff to one of the defendants. The Court held that even if the note given in extension of the original loan was usurious, that fact did not discharge the balance due on such previous indebtedness, instructing the jury (instruction No. 5). "You are instructed that if defendants, or any of them, violated any of the provisions of the

aforesaid statute, that the \$301.00 note and chattel mortgage would be entirely void and uncollectible.

"However, if any part of the \$301.00 note was the unpaid portion of a previous \$500.00 loan, the defendants Howland and Taylor, or either or both, whichever you find is the owner of the unpaid part of the \$500.00 indebtedness, would be entitled to collect said unpaid part of said \$500.00 loan against the furniture set forth in the first chattel mortgage.

"If you find for the plaintiff, your verdict shall be the difference between the sale price of the goods taken by the defendants and the amount which you find to have been due on the original \$500.00 loan."

"A man would do well to carry a pencil in his pocket, and write down the thoughts of the moment. Those that come unsought for are commonly the most valuable, and should be secured, because they seldom return."—*Francis Bacon.*

FOUND

Judge McDonough informs us that a brief case, containing certain memoranda but giving no clue as to the owner, was left in his division of the District Court several weeks ago. The owner may secure same by calling at Division One and duly identifying it.

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