THE USURY LAWS OF UTAH.

From the American Banker, May 17.

In Utah there is no absolute rate of interest except that when no rate has been agreed upon by the contracting persons eight per cent. is the legal charge. The law allows any rate of interest which has been contracted for in writing. The National Bank of Commerce of Provo, Utah, was sued for the recovery of sums claimed by the plaintiff to be usurious. Judge Blackburn, of the First District Court heard the cause and decided against the bank, holding that according to the ruling of the United States Supreme Court in National Bank vs. Johnson, national banks are restricted from charging a higher rate of interest than that fixed by the statutes of the respective states in which the banks are located; and where the statutes of the state do not fix a rate of interest, national banks are limited to charging 7 per cent. The court was undecided, it appears, as to whether this "8 per cent" of the Utah statute could be termed a fixed rate of interest or not. If it were a fixed rate, national banks in Utah could charge 8 per cent, but if it were not a fixed rate but 7 per cent could be charged; but as Whitecotton, the plaintiff, had been charged at a higher rate than either, he was, in any event, entitled to recover double the amount of interest paid.

It is natural, in view of this decision, that national banks in Utah and elsewhere should be anxious to know whether this ruling will be sustained by a higher court. The judge himself appears to have doubted the correctness of his conclusions. A little time might therefore be profitably spent in examining this interesting case in somewhat further detail. First of all, what does the national banking law say on the question of interest? We may sum up the clause covering that point by stating that a national bank may take whatever interest the local law allows to the state and other banks. The exact words of the statute upon which the above case turns are as follows: "When no rate is fixed by the laws of the state or territory or district, the bank may take, receive or charge a rate not exceeding 7 per cent." The intent of this clause was the stone for stumbling to which Judge Blackburn confessed. In adopting the clause relating to interest, Congress did not intend to limit the earning power of the national banks and thereby relegate them to a disadvantageous position compared to state banking institutions. Its unmistakable purpose was to permit the national banks to contract for as high a rate of interest as that permissible to banks regulated by the state laws. This principle must not be overlooked in an attempt to find a just and reasonable application of the statute. But Congress was also influenced by the moral import of its attitude on this question. Under the influence of this sentiment it could not keep wholly silent where the state law failed absolutely to provide for usurious undertakings. Thus it named 7 per cent as the legal rate for national banks in states and territories where the local laws are silent. We say that fixing a separate rate as legal interest for national banks was expressive of the moral sense of Congress which was not to interfere when the local laws allowed a higher rate or expressly provided that any rate may be contracted for. This, at least, is our view of the question, and it remains to be seen how far it is supported by the courts.

Two judgments were cited by the National Bank of Commerce as supporting its case. They are National Bank vs Bruhn, 74 Texas 570 page 576 and Hinds vs Marmolejo 60 Cal. 229. In the latter case Judge Ross said:

"The true interpretation of the act of Congress is, that in those states and territories having no statute upon the subject of interest the national banks are allowed a rate not exceeding 7 per cent, while in those states having statutes they are authorized to charge and receive interest at the rate allowed to other banks and individuals. From this view it follows that inasmuch as we have in California a statute providing "that parties may agree in writing for the payment of any interest and it shall be allowed according to the terms of the agreement until the entry of judgment," the national banks are allowed to charge and receive such rates of interest as may be agreed on."

The ruling in the Texas case is founded on the same argument that the rate established by Congress binds a National bank only where the state law is completely silent. Does the law of Utah make any provisions for the taking of interest by a bank? We have shown that it does. The law says that any rate may be contracted for. Shall we not say, then, that whatever the rate nominated in the contract that is the *fixed* rate, which the law of the state will enforce upon the parties to the same? But the plaintiff in the case under consideration cites the Supreme court of the United States in National banks vs. Johnson, in opposition to this conclusion. But in that case the court upheld the state law, which provided a penalty for charging over 7 per cent in discounts and loans by banks. The bank held that it was a natural person and as such came within the terms of the New York statute, which allowed natural persons to acquire and purchase commercial paper at any rate above 7 per cent. The court found no essential difference between purchase and discount so far as banking operations are concerned and held the bank down to the legal rate. The court denied that where natural persons were allowed to charge over 7 per cent but state banks were limited to this rate, that a national bank could charge the higher percentage. But the court did, in that case, interpose a brief hypothesis, in which it said that if the bank had claimed "That the rate is allowed by the law of the state when it permits the parties to reserve and receive whatever they may agree upon, then the section furnishes the conclusive answer: 'When no rate is fixed by the laws of the state, etc., the bank may take or charge a rate not exceeding 7 per cent,' so that the transaction in question in either aspect is within the prohibition of the statute." But if a case directly bearing on that point, such as the one under our hand should come before that court, would it uphold this dictum? Following its rule to sustain state laws when they do not absolutely conflict with the Federal statutes, would it not make the interest law of the state or territory in which the national bank is situated the governing principle for national banks in discounting and loaning their funds? Should the court's hypothetical question and its insufficient answer, involving a point not directly in issue and the expressions upon which are therefore to be taken as mere dictum, be regarded as conclusive? We think not.

May we not feel confident then, that it will not put a barrier in the way of the clear purpose of the Federal statute if the interpretation of it as we have given it, is correct? That purpose is to place state and national banks on the same footing as regards permissible interest charges. In Utah that rate is the fixed and legal rate, which is contracted for in writing, and the court will not interpose to prevent national banks from taking advantage of a territorial statute which in no wise interferes with the Federal law. If there was a radical conflict here between the act of Congress and the law of Utah, the latter would necessarily become invalid; but in this question of allowable interest we have found no shadow of conflict. Therefore we believe that if this case should come before the Supreme court for adjudication, that tribunal will uphold the territorial law in questions of interest as the rule and guidance for national banks.

Court Jottings.

Last evening Guy C. Royce, filed a $20,000 damage suit against Salt Lake City. Plaintiff states in his complaint that about January 23rd of the present year he was arrested and upon a hearing in the police court convicted of vagrancy and sentenced to imprisonment in the city jail for sixty days; that while confined in the jail he was unlawfully and wrongfully compelled to break rock for the grading and paving of the streets, and while so engaged was struck in the face by a piece of stone. This resulted in the loss of the sight of one eye, while the other was seriously injured. He alleges negligence and carelessness on the part of the city in failing to provide him with suitable tools and a safe and proper place in which to work.

Attorney E. W. Tatlock started for Fish Springs today on legal and mining business.

The $1000 damage suit of E. C. Davies vs B. M. Ellerbeck and Theodore Heinsen, reported in Friday's News, reached the jury late yesterday afternoon. They returned into court with a verdict in favor of the defendant, signed by nine jurors.

The defendants in the damage case of Frank Leak vs the Rio Grande Western Railway company have appealed to the Supreme court and filed their transcript.

Colonel J. W. Donnellan has filed his $5000 as receiver of Beck's Hot Springs with District Clerk McMillan.

In the case of Arthur Pratt vs E. H. Parsons a proposed statement on appeal and motion for a new trial has been filed.

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