

HENRY H. BROWN ET AL. }

vs.

JACOB WATERS ET AL. }

DECEMBER TERM, 1850.

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 [USURY—CONTRACTS.]
 

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THE statute against usury cannot be evaded by any shift or device ; and no matter what the form of the transaction may be, the courts will explore the real truth, and if they discover that the object was a loan of money at more than the legal interest, it will be condemned.

A renewal of the usurious contract between the same parties, partakes of the infirmity of the original agreement ; but, if the latter is discharged, or is made the consideration of a contract entirely new, as being with a third party, not a party to the original contract, or to the usury paid, or as combining other parties and considerations, and not being a contrivance to evade the statute, the usury laws do not apply.

The Chancellor, in this case, refused to set aside an agreement, made more than eight years after the alleged usurious contract, carried into execution on both sides, and combining other parties and considerations than those in the original contract, and with no proof that it was a contrivance to evade the statute.

It is not the duty of courts to shape the contracts of parties, but to enforce such as the parties themselves make when they are competent to make them, and when no unfairness, fraud, surprise or mistake is shown.

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[A bill was filed on the 13th of July, 1847, by Henry D. Brown and Charles A. Waters, for a sale of the real and personal estate of the defendant, Jacob Waters, which was conveyed to them by said Jacob, by a deed dated on the 12th of May, 1846, which, though absolute on its face, is admitted to have been intended as a security for a certain indebtedness in which the grantor then stood to the grantees. Upon this bill, such proceedings were had, that on the 14th of October, 1847, a decree was passed for the sale of the property conveyed by said deed for the payment of the debts of the said Waters, and appointing the complainants trustees for that purpose, and directing them to give the usual notice to creditors to file their claims with the register within four months of the day of sale. A part of the real, and all of the personal, estate was sold by the trustees on the 30th of November, 1847 ; which sale was