RECENT IMPORTANT DECISIONS

ACKNOWLEDGMENT—WHO MAY TAKE—COMPETENCY AFFECTED BY INTEREST.—The acknowledgment of a mortgage upon a homestead was taken by an officer and stockholder in a loan company which was the agent for the loaner. *Held*, that the acknowledgment was valid. *Gilbert* v. *Garber* (1903), — Neb. —95 N. W. Rep. 1030.

It is a general rule that an officer is incompetent to take an acknowledgment to an instrument in which he is directly interested. *Wilson* v. *Traer* (1866), 20 Iowa, 231; *Iron Belt Ass'n.* v. *Groves* (1898), 96 Va. 138. Although when this interest is not apparent there is some disagreement among the authorities. *Bank* v. *Radtke* (1893), 87 Ia. 363: *Morrow* v. *Cole* (1899), 58 N. J. Eq. 203. But if the officer is simply agent or attorney for a party interested, the rule is that he is not disqualified unless it is shown that he has some beneficial interest in the instrument, or the amount of his compensation depends on the making of the conveyance. *Havemeyer* v. *Dahn* (1896), 48 Neb. 536, 33 L. R. A. 332; *Penn* v. *Garvin* (1892), 56 Ark. 511. An example of the permissible extent of that interest is furnished by the principal case. "It seems clear that any officer acknowledging an instrument must be interested in the transaction, at least to the extent of his fees. If the validity of his acknowledgment is to be destroyed by that fact, we should have to search for a notary who would incur all the responsibilities of that important office from pure disinterestedness."

ACKNOWLEDGMENT OF MORTGAGE BEFORE STOCHOLDER IN MORTGAGEE CORPORATION—STOCKHOLDER AS WITNESS.—A mortgaged certain lots to corporation X, in which B and C were shareholders. The mortgage was executed by A, in the presence of B and C, and was acknowledged by A, before C, a notary public. To a petition filed by R, in the probate court, as assignee for the benefit of the creditors of A, asking for an order to sell the lots to pay debts, the corporation, made a party defendant to the proceedings, filed its answer and cross-petition, asserting a claim and lien against the property by virtue of the mortgage held by it. To this claim, R, the assignee, replied, denying the validity of said mortgage for the reason that the mortgage was neither witnessed nor acknowledged according to law. *Held*, by the probate, circuit, and supreme courts, that the mortgage was valid, and the claim of the corporation thereunder was sustained. *Read* v. *Toledo Loan Co.* (1903), — Ohio St. —: 67 N. E. Rep. 729.

The holdings of the courts upon the degree of interest which will render an officer incompetent to take an acknowledgment, are not harmonious. While it is well settled that an acknowledgment before a grantee named in a deed is of no effect, *Wilson* v. *Traer*, 20 Ia. 231; *Groesbeck* v. *Seeley*, 13 Mich. 329, there is some conflict upon the point whether a stockholder can take an acknowledgment of, or be a witness to, a deed or mortgage to the corporation. Although this point seems now to be settled in Ohio, there are many courts that take a contrary view. *Smith* v. *Clark*, 100 Ia. 605; *Kothe* v. *Krag-Reynolds Co.*, 20 Ind. App. 293; *Horbach* v. *Tyrrell*, 48 Neb. 514, 37 L. R. A. 434. See I. MICH. LAW REV. p. 215.

AGENCY—ESTOPPEL TO SET UP ILLEGALITY.—The plaintiff brings suit on a replevin bond given by the American Preservers Company, with the defendant as surety. The bond was given in a suit in the Illinois state courts.