

69 N. H. 571, 573. Whether or not the contract in question was usurious must depend upon the value of the mortgaged property.

The transaction is to be considered with reference to the law as it existed at the time the contract was made. P. S., c. 2, s. 35 (P. L., c. 2, s. 35); *Lakeman v. Moore*, 32 N. H. 410; *Farr v. Chandler*, 51 N. H. 545; *Hibbard v. Company*, 70 N. H. 156; *Noyes v. Edgerly*, 71 N. H. 500, 504. Even though usurious, the agreement was not void (P. S., c. 203, s. 3), nor was it affected by the provisions of Laws 1899, c. 31, relating to penalties. *Moffie v. Slawsby*, 77 N. H. 555; *Smith & Sargent v. Company*, 78 N. H. 152.

The plaintiff is not allowed, however, to receive compensation for the use of his money in excess of six per cent (*Pastore v. Priori*, 79 N. H. 1), and so far as the contract calls for any collateral benefit which would result in the payment of a greater sum, it cannot be enforced upon such facts as now appear. Whether there are facts to justify a reformation of the contract is a matter to be considered by the superior court.

Case discharged.

All concurred.

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Strafford, }
Oct. 5, 1926. }

EMMET FLANNAGAN, *by his next friend*, v. PROSPER SHEVENELL
& SON, INC.

The superior court may suspend a general rule in a particular case.

A plaintiff, going to hearing on a petition generally, without objection to the defendant's failure to file an answer, waives the rule that a petition if not answered is to be taken *pro confesso*.

Errors in an original decree may be corrected on motion to set aside the decree, without giving the moving party a right to a new trial generally.

There is no presumption that disability suffered by a petitioner under the workmen's compensation act will continue for the full statutory period for which compensation may be allowed. The actual or prospective duration of the disability must be proved by the plaintiff.

PETITION, for assessment of compensation under Laws 1911, c. 163. Verdict for plaintiff, who, claiming an inadequate verdict, excepted to certain findings and rulings. Transferred by *Sawyer*, C. J.

Dennis McDonough, for the plaintiff.

Lucier & Lucier, for the defendant.

ALLEN, J. Three of the exceptions are taken to findings on the ground that there was no evidence to support them. The record shows that the findings were reasonably warranted as inferences from the evidence.

One exception relates to findings inconsistent with the averments of the petition on the ground that the defendant, not filing an answer, admitted the averments, which were therefore to be taken *pro confesso* in accordance with rule 117 of the superior court. The superior court may suspend a general rule in a particular case. *Petition of Rindge*, 54 N. H. 106, 108; *Hutchinson v. Railway*, 73 N. H. 271, 283; *Moses v. Craig*, 77 N. H. 586, 587. Furthermore, the hearing on the petition generally and of all matters in issue without objection from the plaintiff must be found to constitute a waiver of any rights under the rule.

Another exception is to the court's action in finding further facts in its amended decree upon a motion to set aside the original decree. The correction of an error in the original decree was the only modification of it. Since the motion to set aside the decree was based on a claim of errors, it is not perceived how their correction so far as they are found is not within the court's province. The motion necessarily called for such correction as within its scope. The error did not affect the other findings, or the general verdict except as it was corrected in connection with the correction of the error, and there was therefore no right to a new trial generally. *West v. Railroad*, 81 N. H. 522, 533, 534.

The exception to the court's refusal to place on the defendant the burden of showing that a disability proved would not continue for the statutory limit of time is also overruled. The act contains the provision that on a petition the judgment for the plaintiff "shall be for a lump sum equal to the amount of payments then due and prospectively due" under the act. Laws 1911, c. 163, s. 9. By section 6 the weekly payment therein provided for is in no event to extend over three hundred weeks from the date of the accident, and "such payment shall continue for such period . . . provided . . . disability continue during such period." This language makes no assumption of a continuance of disability for the full period of time in the absence of proof of a shorter time, but on the contrary implies a continuance only for such time as is proved, in accordance with the usual requirement as to proof placing its burden on the plaintiff.

The last exception is on the ground that "the original and

amended decree are contrary to the law, the evidence and the weight of the evidence." So far as it presents any question of law, no argument has been made to support it and no reason for its maintenance suggests itself.

Exceptions overruled.

All concurred.

Hillsborough, }
Oct. 5, 1926. }

EVA DEROSIER, *Adm'x*, v. NEW ENGLAND TELEPHONE AND
TELEGRAPH COMPANY.

An objection to the sufficiency of evidence upon a point susceptible of proof is waived unless taken at a time when there is still an opportunity to supply the deficiency.

A case may be reopened after argument to the jury for the reception of further testimony, if necessary to promote justice.

CASE, for negligently causing the death of the plaintiff's intestate, being the same case reported in 81 N. H. 451. Trial by jury and verdict for the plaintiff.

Transferred by *Branch*, C. J., upon the defendant's exceptions, which are stated in the opinion.

Robert W. Upton, John M. Stark and Peter J. King (Mr. Upton orally), for the plaintiff.

Drew & Carr (of Massachusetts; Mr. Drew orally), for the defendant.

PEASLEE, C. J. The defendant did not move for a nonsuit or for a directed verdict at the usual time; but asked for a directed verdict after the charge to the jury. The motion was denied and the defendant excepted. Objection to the consideration of the question sought to be raised in this manner is put upon the ground that the motion came too late.

The well-established rule is that an objection to the sufficiency of evidence is waived unless taken at a time when there may still be an opportunity to supply the deficiency. *Elwell v. Roper*, 72 N. H. 585; *Gendron v. St. Pierre*, 73 N. H. 419; *Farnham v. Anderson*, 74 N. H. 405; *Coles v. Railroad*, 74 N. H. 425; *Head & Dowst Com-*