

Case No. 15,830. UNITED STATES v. MOXLEY.
[2 Cranch, C. C. 64.]¹

Circuit Court, District of Columbia.

Dec. Term, 1812.

WITNESS—COMPETENCY—INTEREST—INDICTMENT FOR USURY.

Upon an indictment for taking usury, the borrower is a competent witness for the prosecution, if he has paid the money, and be not the informer.

[Cited in *U. S. v. Anderson*, Case No. 14,452.]

Indictment for taking usury from William Calder.

The attorney of the United States offered William Calder as a witness.

Mr. Morsell and Mr. Key, for defendant, objected that he was interested. First, because he is the informer, and entitled to half the penalty, under the Maryland law of September, 1704, c. 69, § 3; and secondly, because he is offered to invalidate his own contract. If he has paid the money he may recover it back; if he has not paid it he is interested to set aside the contract 1 McNal. Ev. 105; *Rex v. Whiting*, 1 Salk. 283, 1 Ld. Raym. 396.

THE COURT (FITZHUGH, Circuit Judge, absent) was of opinion that the witness was competent; having declared upon the voir dire, that he was not interested; and had paid the money, and it being admitted that he was not a voluntary informer.

¹ [Reported by Hon. William Cranch, Chief Judge.]