

were so lent or advanced and the plaintiff shall be entitled to recover the sum of money or the value of the goods and chattels actually lent or advanced with legal interest from the time the same was so lent or advanced.

Plea of usury which sets up a loan is good; *contra* if it sets up a sale. Meaning of the term "discounted." Plea open to criticism as to form, but good under this section; demurrer should have been overruled. *Murphy v. Stubblefield*, 133 Md. 27.

The borrower may recover usurious interest in an action for money had and received. Provisions in various state constitutions affecting usury, set out. *Scott v. Leary*, 34 Md. 398. And see *Bandel v. Isaac*, 13 Md. 222.

Though a borrower omits to make defense of usury at law he may, under proper circumstances, be entitled to relief in equity. *Hitch v. Fenby*, 6 Md. 218.

Usury must be pleaded in accordance with this section. *McKim v. White Hall Co.*, 2 Md. Ch. 510.

For the application of this section to equity proceedings instituted by the borrower, see *Neurath v. Hecht*, 62 Md. 224.

As to how usury should be set up in equity, see *Chambers v. Chalmers*, 4 G. & J. 420. As to the denial of usury in an answer, see art. 16, sec. 172.

See notes to sec. 4.

An. Code, sec. 6. 1904, sec. 6. 1888, sec. 6. 1876, ch. 358. 1912, ch. 835.

6. Nothing in the preceding section shall be so construed as to make usury a cause of action in any case where the bond, bill obligatory, promissory note, bill of exchange or other evidence of indebtedness has been redeemed or settled for by the obligor or obligors in money or other valuable consideration, except that usury shall be a cause of action in all cases where the redemption or settlement above mentioned is secured by or connected with a renewal in whole or in part of the original indebtedness, provided that such original indebtedness shall not have exceeded the sum of \$500.¹

This section is constitutional. Its purpose and intent. A mortgage transaction is "redeemed or settled for," where the money is paid and a release given, although release is never recorded. *Lovett v. Calvert, etc., Co.*, 106 Md. 138; *Second German American Bldg. Assn. v. Newman*, 50 Md. 65.

This section contemplates a *bona fide* and not a sham payment. Where an old mortgage is released, but a new one is made to secure balance due on old mortgage, the transaction is not settled. *Border State, etc., Assn. v. Hilleary*, 68 Md. 54. See also *Border State, etc., Assn. v. Hayes*, 61 Md. 599.

This section could not constitutionally be construed retroactively, and hence had no application to case pending when act of 1876, ch. 358, was approved. *Williar v. Baltimore, etc., Loan Assn.*, 45 Md. 555.

Prior to this section the law was to the contrary. *Border State, etc., Assn. v. Hayes*, 61 Md. 600; *New York Security Co. v. Davis*, 96 Md. 87.

Cited but not construed in *Stewart v. Workingmen's Bldg. Assn.*, 106 Md. 679; *Dickey v. Permanent Land Co.*, 63 Md. 175; *Woods v. Matchett*, 47 Md. 395.

¹ For a case dealing with sec. 7 of art. 49 of An. Code, 1912 (repealed by act, 1918, ch. 88), see *State v. King*, 124 Md. 497.