

JOHN F. WILSON
 vs.
 MATTHEW HARDESTY. } SEPTEMBER TERM, 1847.

[USURY—CONSTITUTIONALITY OF THE ACT OF 1845, CH. 352.]

WHERE a party goes into a court of equity to ask relief against an usurious mortgage or contract, he must do equity, by paying, or offering to pay, the principal sum, with legal interest.

When the legislature transcends its authority, the courts of justice in the discharge of their duties, are bound to pronounce its acts void: but this high power of the judiciary should be exercised with great caution, and only when the act of the legislature is manifestly beyond the pale of its authority.

Retrospective laws and laws divesting vested rights, unless *ex post facto*, or impairing the obligation of contracts, do not fall within the provision of the constitution of the United States, however repugnant they may be to the principles of sound legislation.

The act of 1845, ch. 352, as affecting pre-existing contracts, tainted with usury, is neither prohibited by the constitution or bill of rights of this State; nor does it come within the provision contained in the constitution of the United States, prohibiting the States from passing *ex post facto* laws, and laws impairing the obligation of contracts.

[The object of the bill in this case was the sale of certain premises which had been mortgaged to the complainant by the defendant, to secure to the former the payment of \$500 00, with interest from the 15th October, 1840. The defendant pleaded usury, stating that the sum actually advanced to him on the day of the execution of the mortgage was only \$470 00, and prayed "judgment, if he, the defendant, ought to be charged with the debt," &c. The complainant confessed the facts of the plea, and consented to a decree for the sum actually due. The Chancellor deemed this a waiver of objection to the sufficiency of the plea, under the act of 1845, chapter 352, which limits the defence to the excessive usury, and makes it the duty of the court, after ascertaining the amount fairly due for principal and interest, to decree accordingly. Having stated the case, he delivered his opinion as follows:]