dollars for the forbearance of one hundred dollars for one year, and so after that rate for a greater or lesser sum, or for a longer or shorter time, he shall be deemed guilty of usury.

For the test as to whether a transaction is usurious, see Williams *v.* Reynolds, 10 Md. 67; Sauerwein *v.* Brunner, 1 H. & G. 482; Wetter *v.* Hardesty, 16 Md. 11; Wilson *v.* Russell, 13 Md. 495; Robertson *v.* Homestead Assn. 10 Md. 398; Brown *v.* Waters, 2 Md. Ch. 201; Fitzhugh *v* McPherson. 3 Gill. 409; Thomas *v.* Catheral, 5 G. & J. 23; Stockett *v.* Ellicott, 3 G. & J. 123; Caton *v.* Shaw, 2 H. & G. 14; Tyson *v.* Rickard, 3 H. & J. 109; Hogmire *v.* Chapline, 1 H. & J. 29.

This section in itself does not avoid the contract where a higher rate of interest than that therein allowed is exacted. Bandel *v.* Isaac, 13 Md. 229.

Cited but not construed in Lovett *v.* Calvert, etc., Mtge. Co., 106 Md. 136.

See notes to sec. 1.

1904, art. 49, sec. 4. 1888. art. 49, sec. 4. 1860, art. 95, sec. 4. 1845, ch. 352, sec. 4.

4. Any person guilty of usury shall forfeit all the excess above the real sum or value of the goods and chattels actually lent or advanced and the legal interest on such sum or value, which forfeiture shall enure to the benefit of any defendant who shall plead usury and prove the same.

Effect of this section.

This section and section 5 do not deprive the borrower of his existing remedies for relief against the payment of illegal interest. Equity will relieve him, and he can also maintain an action at law. He may except to the confirmation of an award on the ground of usury, although such defense was not made before the arbitrator. Woods *v.* Matchett. 47 Md. 395; New York, etc., Co. *v.* Davis, 96 Md. 87. See also, Smith *v.* Myers, 41 Md. 433; Scott *v.* Leary, 34 Md. 398; Baugher *v.* Nelson, 9 Gill. 299; Carter *v* Dennison, 7 Gill. 158; Doub *v.* Barnes, 1 Md. Ch. 141.

The act of 1845, ch. 352, is nothing more than an act relating to the remedy. Until the borrower brings the defense of usury to the attention of the court, it has no existence in legal contemplation. Article 3. section 49, of the constitution of 1851, construed in connection with this section Scott *v.* Leary, 34 Md. 397; Bandel *v.* Isaac, 13 Md. 229; Baugher *v.* Nelson, 9 Gill, 299.

Although the borrower is entitled to recover back the usurious surplus. such right of action is not created by the code. The code fixes the rate of interest only. Williar *v.* Baltimore, etc., Loan Assn., 45 Md. 559.

Usurious instruments are not avoided, but are valid to the extent of the principal and legal interest. Gwynn *v.* Lee, 1 Md. Ch. 450. See also, Smith *v.* Myers. 41 Md. 433; Montague *v.* Sewell. 57 Md. 417; Gwynn *v.* Lee, 9 Gill. 145.

Generally.

This section and section 5 are constitutional, although applied to a note executed before the satute was passed. Baugher *v.* Nelson, 9 Gill, 302; Herbert *v.* Gray. 38 Md. 533; Wilson *v.* Hardesty, 1 Md. Ch. 67; Anderson *v.* Baker. 23 Md. 565.

The burden of proving usury rests upon the defendant—proof insufficient. Williams *v.* Banks, 19 Md. 38.

In the case of a usurious mortgage. the assignee of the equity of redemption may claim abatement for the illegal interest. Andrews *v.* Poe, 30 Md. 489.

This section applied. Williams *v.* Banks. 11 Md. 235.

The wisdom of this section upheld. This section referred to in construing article 23, section 124. Commercial Assn. *v.* Mackenzie, 85 Md. 141.

This section contrasted with the law of the District of Columbia on usury. Eastwood *v.* Kennedy, 44 Md. 571.