

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.

See notes to sec. 6 and to art. 23, sec. 129.

An. Code, 1924, sec. 4. 1912, sec. 4. 1904, sec. 4. 1888, 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 sec. 5 do not deprive borrower of his existing remedies for relief against 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; *Baugh v. Nelson*, 9 Gill, 299; *Carter v. Dennison*, 7 Gill, 158; *Doub v. Barnes*, 1 Md. Ch. 141.

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

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

Usurious instruments are not avoided, but are valid to extent of principal and legal interest. *Brown v. Real Estate Co.*, 134 Md. 496. (See notes to art. 23, sec. 151.) *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 sec. 5 are constitutional, although applied to a note executed before the statute was passed. *Baugh 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 case of a usurious mortgage, the assignee of equity of redemption may claim abatement for 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 art. 23, sec. 151. *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.

Cited but not construed in *Hitch v. Fenby*, 4 Md. Ch. 197.

As to the invalidity of assignments of salaries to secure usurious loans, see art. 8, sec. 15.

See notes to sec. 6 and to art. 23, sec. 129.

An. Code, 1924, sec. 5. 1912, sec. 5. 1904, sec. 5. 1888, sec. 5. 1845, ch. 352, sec. 1.

5. Every plea of usury shall state the sum of money or the value of goods or chattels lent or advanced with the time at which the same was or 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.