

Repealer.

63. SEC. 6. That this act shall take effect immediately, and that all acts or parts of acts inconsistent with this act be and the same are hereby repealed.

A further supplement to an act entitled "An act to regulate the business of fire, life, accident, marine and live stock insurance, by companies or associations not incorporated by this state," approved April ninth, eighteen hundred and sixty-seven.

P. L. 1875, p. 108.

Approved April 9, 1875.

No foreign company, nor any person for them, shall effect insurance before compliance with law.

64. SEC. 1. That it shall not be lawful for any insurance company of any kind whatsoever, not incorporated under or by virtue of the laws of this state, itself or by its agents, surveyors, canvassers, or other representative of whatever designation, nor for any such agent, canvasser or representative of, nor for any person on behalf of any such insurance company to open or maintain any office, or in any manner, directly or indirectly, transact any business of insurance within this state, notwithstanding such business may be transacted wholly with citizens of other states, without having previously complied with the provisions of the act to which this is a supplement, and the various supplements thereto.

Certificates of officers of other states to be received as such states receive certificates of this state.

65. SEC. 2. That if by virtue of the law of any state or nation, or by any rule, regulation or requirement of the officer charged with the execution of the insurance laws of any such state or nation, any certificate of the secretary of state of this state, in any wise relating to the business or condition of any insurance company of this state transacting business or applying for authority to transact business in any such state or nation, shall be refused or not recognized, then it shall be the duty of the secretary of state of this state to refuse to accept any certificate of such officer of another state or nation, in any wise relating to the business or condition of any insurance company of such state or nation, transacting business or applying for authority to transact business in this state, and any insurance company of such other state or nation, transacting business or applying for authority to transact business in this state, shall be subject to the same rules, regulations, exactions, examinations, and in the case of life insurance companies, to the same valuation of policies, and in every other respect to the same requirements as by the act to which this is a supplement and the various supplements thereto, are imposed upon insurance companies of this state; and it shall not be lawful for any insurance company of such other state or nation, itself or by its agents, or otherwise, or by any person on behalf thereof, directly or indirectly, to transact any business of insurance within this state, without having fully complied with the provisions of this act.

Penalty for violation of this act.

66. SEC. 3. That the penalty for every violation of this act shall be five hundred dollars, to be sued for and collected, on complaint, in the name of the state, by the prosecutor of the pleas for the county where the offence shall have been committed; and the person or persons against whom a judgment shall be obtained, shall be committed to the county jail until such fine and costs are paid or otherwise discharged; and one-half of said penalty, when recovered, shall be paid to the charitable fund of any fire department in said county, and the other half to the complainant.

Interest.

1. Seven per cent. to be rate of interest.
2. Only sum lent on usurious contract to be recovered without interest and costs.
3. Person offending against first section may be examined as a witness.
4. Borrower may file bill in equity.
5. Rate of brokerage.
6. Canal and railroad bonds excepted.
7. What contracts usurious in Monmouth county.

An act against usury.

Revision—Approved March 27, 1874.

1. That no person or corporation shall, upon any contract, take, directly or indirectly, for loan of any money, wares, merchandise, goods or chattels above the value of seven dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter time.(a)

2. In all cases of suits at law or in equity to enforce any note, bill, bond, mortgage, contract, covenant, conveyance, or assurance, which shall be hereafter made for the payment or delivery of any money, wares, merchandise, goods, or chattels lent, and on which a higher rate of interest shall be reserved or taken than was or is allowed by the law of the place where the contract was made or is to be performed, the amount or value actually lent, without interest or costs of suit, may be recovered, and no more; and if any premium or illegal interest shall have been paid to the lender, the sum or sums so paid shall be deducted from the amount that may be due as aforesaid, and recovery had for the balance only.(b)

3. Every person offending against the first section of this act, may be compelled to answer as a witness in any suit that he may bring, either at law or in equity, as to his agreement to receive, or the receipt by him, of any money, wares, merchandise, goods or chattels, in violation of the provisions of said first section.

4. Any borrower of money, wares, merchandise, goods or chattels, may exhibit a bill in chancery against the lender, and compel him or her to discover,(c) upon oath or affirmation, the money or wares, merchandise, goods or chattels, really lent, and all agreements, devices, shifts, bargains, contracts and conveyances which shall have passed between them relative to such loan, or the repayment thereof, and the interest or consideration for the same, and if thereupon it shall appear that more than lawful interest was taken or reserved, the lender shall be obliged to accept his principal money, or the wares, merchandise, goods or chattels, or the value thereof, without any interest or other consideration, and to pay costs.

5. Every solicitor, scrivener, broker, or driver of bargains, who shall directly or indirectly, take or receive more than the rate or value of fifty cents for brocage, or soliciting or procuring the loan or forbearance of one hundred dollars for a year, and so in proportion for a greater or less sum, or for a longer or shorter time, or above twenty-five cents for drawing, making or renewing the bond or bill for such loan or forbearance, or for any counter bond or bill concerning the same, shall, for every such offence, forfeit sixteen dollars, to be recovered by action of debt, with costs, by any person who shall sue for the same; the one moiety to the prosecutor, and the other to the state.(d)

6. No bond, mortgage or other security for the payment of money heretofore made or issued, or that may hereafter be made or issued by any railroad or canal corporation created by or under the laws of this state, shall be held, deemed or considered invalid, because such bond, mortgage or other security may have been made, issued, sold, assigned or otherwise disposed of by such corporation below the par value thereof; *provided*, such bond, mortgage or other security shall be valid on its face.

(a) To constitute usury there must be a *contract*, although no illegal interest be taken thereon, *Clark v. Badgley*, 3 Hal. 233. *Howell v. Auten*, 1 Gr. Ch. 44. *Varick v. Crane*, 3 Gr. Ch. 128. *Minn v. Newark Savings Institution*, 1 C. E. Gr. 537. *Gillette v. Ballard*, 10 C. E. Gr. 491; affirmed on appeal. The payment and receipt of excessive interest is *prima facie* evidence of the corrupt agreement, *Varick v. Crane*, 3 Gr. Ch. 128. *Cummins v. Wise*, 2 Hal. Ch. 73. *Denyse ads. Crawford*, 3 Harr. 325. A subsequent agreement or taking cannot affect a valid security, *Sloan v. Somers*, 2 Gr. 510. *Donnington v. Meeker*, 3 Stock. 362. *Ware v. Thompson*, 2 Beas. 66. *Walter v. Lind*, 1 C. E. Gr. 445. *Conover v. Hobart*, 9 C. E. Gr. 120. The taking of illegal interest constitutes usury, *Diercks v. Kennedy*, 1 C. E. Gr. 210. But it must be done knowingly, *Sussex Bank v. Baldwin*, 2 Harr. 487, 497. *Griffin v. New Jersey Oil Co.*, 3 Stock. 49. A withholding of part of a loan in violation of the agreement, is not usury, *Auble v. Trimmer*, 2 C. E. Gr. 242.

(b) Only applies to contracts made after the date of its approval, (April 12th, 1864), *Warwick v. Mariatt*, 10 C. E. Gr. 188. *S. C. 11 C. E. Gr. 548*. See *Mucklar v. Cross*, 3 Vr. 423.

A payment of a bonus to extend the time of payment of a security, must be credited as a *part payment* on such security, *Nightingale v. Maginnis*, 5 Vr. 461. *Jones v. Trusdell*, 8 C. E. Gr. 121, 554. *Laing v. Martin*, 11 C. E. Gr. 93. *Coult v. McCarty*, 8 C. E. Gr. 126. *Pond v. Causdell*, 8 C. E. Gr. 181. Where illegal interest has been exacted, the mortgagor is not entitled to a deduction of all the interest paid, but only of the interest on the *excess*, *Bedle v. Wardell*, 10 C. E. Gr. 349. The defence is still in the nature of a *penalty or forfeiture*, and the old rules respecting proof apply, *Conover v. Van Mater*, 3 C. E. Gr. 481. *Roberts v. Birgers*, 5 C. E. Gr. 140. *Morris v. Taylor*, 7 C. E. Gr. 438, 606. *Hannas v. Hawk*, 9 C. E. Gr. 124.

(c) If a discovery is necessary to aid a defendant in a defence at law or otherwise, equity will not require him to answer under oath, where such answer may subject him to a penalty or forfeiture, *Vanderveer v. Holcomb*, 2 C. E. Gr. 88, 547.

(d) This penalty may be sued for by any person as a common informer, *Phillips v. Bevans*, 3 Zab. 373.

Rev. 269.
Har. 45.
R. S. 795.
P. L. 1855, p. 500.
" 1864, p. 714.
" 1866, p. 406.
Seven per cent. to be rate of interest.
R. S. 795, § 1.
P. L. 1866, p. 406.

Only sum lent on usurious contract to be recovered without interest or costs.

P. L. 1864, p. 714.

Person offending against first section may be examined as witness.
Revision.

Borrower may file bill in equity.

R. S. 795, § 4.

Rate of brokerage.
Ib. § 5.

Canal and railroad bonds excepted.

P. L. 1855, p. 500.

An act to prevent usury in the county of Monmouth.

P. L. 1875, p. 248.

Approved March 10, 1875.

What contracts
usurious in Mon-
mouth county.

7. SEC. 1. That all contracts for the loan of any money, wares, merchandise, goods or chattels, hereafter made in the county of Monmouth in this state, whereby above the value of seven dollars for the forbearance of one hundred dollars for a year or above that rate for a greater or less sum, or for a longer or shorter period, shall be taken directly or indirectly, shall be utterly void.

Repealer.

8. SEC. 2. That all acts and parts of acts inconsistent with this act are and the same are hereby repealed.

Judgments.

I. LIEN OF.

1. Lands liable to be sold for debt.
2. Judgment binds lands only from entry.
3. Judgment of common pleas not to affect land unless a rule be entered.

II. RECORDING.

4. To be entered and indexed within six months.
5. Bond of clerk may be prosecuted for neglect.

III. DOCKETING.

6. Judgment docketed in supreme court.
7. Clerk to keep docket.
8. Form of statement to be entered in docket.
9. Clerks to transmit copies of judgments to the supreme court.
10. Dockets to be public records.
11. Operation of judgments docketed in supreme court.
12. Execution not to issue in court below after docketing.
13. Judgment, how revived.
14. Execution to be stayed in case of writ of error.
15. Judgment may be removed to supreme court.
16. Proceedings in case of reversal.

17. Fees of clerks.

IV. ASSIGNMENTS OF, RECORDED.

18. Assignment of judgments to be recorded.
19. Certified copies to be evidence.
20. Fees for recording assignment.

V. ENTRY OF SATISFACTION.

21. Manner of making entry of.
22. Party having judgment satisfied, to enter satisfaction.
23. Warrant to enter satisfaction.
24. Attorney of record may authorize clerk to enter satisfaction.
25. Preceding section extended to mechanics' liens and decrees in chancery.
26. Fees for services.
27. Court may order satisfaction entered.
28. Satisfaction may be entered by survivor.
29. Parties may proceed before court to have satisfaction entered.
30. Where a judgment is recovered against two or more defendants, satisfaction may be entered as to defendant or defendants satisfying the same.

R. S. 660, 826, 974.
993.

An act concerning judgments.

Revision—Approved March 27, 1874.

P. L. 1856, p. 195.
" 1862, p. 219.
" 1867, p. 809.
" 1871, p. 108.
" 1873, p. 47,
147.

Lands liable to
be sold for debt.

R. S. 660, § 1.

Judgment binds
lands only from
entry.

Ib. § 2.

Judgment of
common pleas
on appeal not to
affect lands, un-
less rule for re-
cording it be
entered.

P. L. 1862, p. 219.

I. Lien of.

1. That all lands, tenements, hereditaments and real estate shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices' court constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money and costs so recovered or to be recovered; *provided*, that no lands, tenements, hereditaments, or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators. (a)

2. No judgment shall affect or bind any lands, tenements, hereditaments, or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court. (b)

3. Judgments of the court of common pleas upon appeals from the courts for the trial of small causes shall not affect or bind any lands, tenements, hereditaments, or real estate, unless a rule shall be entered in the minutes of the court of common pleas in which such judgment shall be rendered, for recording such judgment, which rule shall be a rule of course, and may be entered at any time without notice; and it shall be the duty of the clerk of the several courts of common pleas, upon the entry

(a) Where a claim is barred by the statute of limitations at the time of the testator's death and the debt is to be satisfied out of the *real estate*, no acknowledgment of the executor will bind the real estate in the hands of the devisee, *Stark v. Hunton*, 2 Gr. Ch. 300. But see *Shreve v. Joyce*, 7 Vr. 44. A decree or judgment against executors does not bind heirs or devisees, *Hazen v. Tillman*, 1 Hal.

Ch. 363. *Den v. Ayres*, 1 Gr. 153. *Den, Cozens v. Colson*, Pen. *873. *Budd v. Hiler*, 3 Dutch. 44.

(b) A judgment without the issuing of an execution operates as a lien from the time of recording it, *Vansciver v. Bryan*, 2 Beas. 434. *Reeves v. Johnson*, 7 Hal. 29. *Bloom v. Welsh*, 3 Dutch. 177. See *Leggett v. Doremus*, 10 C. E. Gr. 122.