

Usury.

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An act against usury.

Revision—Approved March 27, 1874.

1. [Amended by Sec. 7, *post.*]
2. That 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. (*a*)
3. That 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. That 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, (*b*) 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. That 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 offense, 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. (*c*)
6. That 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.

Rev. 269.

Har. 45.

R. S. 795.

P. L. 1855, p. 500.

" 1864, p. 714.

" 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.

(*a*) Only applies to contracts made after the date of its approval (April 12th, 1864). *Warwick v. Marriott*, 10 C. E. Gr. 188. S. C., 11 C. E. Gr. 548. See *Mucklar v. Cross*, 3 Vr. 428. 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. *Fond 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. 849. The defense 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. Birgess*, 5 C. E. Gr. 140. *Morris v. Taylor*, 7 C. E. Gr. 488, 606. *Hannas v. Hawk*, 9 C. E. Gr. 124.

(*b*) If a discovery is necessary to aid a defendant in a defense 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. See *Cook v. McNeill*, 14 Steu. 89.

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

Supplement.

Approved February 26, 1878.

P. L. 1878, p. 30.

7. SEC. 1. That the first section of the act to which this is a supplement, and which reads as follows [see P. L. 1878, p. 30], be and the same is hereby amended so as to read as follows :

Interest to be at the rate of six per cent. per annum.

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

Repealer.

8. SEC. 2. That so much of the first section of the act to which this is a supplement as is inconsistent with this supplement, be and it is hereby repealed.

An act to prevent usury in the county of Monmouth.

Approved March 10, 1875.

P. L. 1875, p. 248.

What contracts usurious in Monmouth county.

9. 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. (b)

Repealer.

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

(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. 123. *Minn v. Newark Savings Institution*, 1 C. E. Gr. 337. *Gillette v. Ballard*, 10 C. E. Gr. 491; affirmed, 12 C. E. Gr. 489. The payment and receipt of excessive interest is *prima facie* evidence of the corrupt agreement. *Varick v. Crane*, 3 Gr. Ch. 123. *Cummins v. Wise*, 2 Hal. Ch. 73. *Denyse ads. Crawford*, 3 Har. 325. A subsequent agreement or taking cannot affect a valid security. *Sloan v. Somers*, 2 Gr. 510. *Downington 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 Har. 437. 497. *Griffin v. New Jersey Oil Co.*, 3 Stock. 43. A withholding of part of a loan in violation of the agreement, is not usury. *Auble v. Trimmer*, 2 C. E. Gr. 242. Where an account extending over a number of years was ordered, and the rate of interest during that time had been changed by law, the interest payable on the accounting will vary from time to time during the period for which interest is allowed, according to the changes. *Wilson v. Cobb*, 4 Stew. 92. See, also, *Jersey City v. O'Callaghan*, 12 Vr. 349. (b) See *Monfert's Administrator v. Rowland*, 11 Stew. 181, 13 Stew. 281.

Veteran Associations.

1. Governor may issue military stores to veteran associations.
2. Repealer.

3. Governor may loan camp and garrison equipage, &c., to the sons of veterans.
4. Repealer.

An act concerning veteran associations.

Approved February 27, 1879.

P. L. 1879, p. 65.

Governor authorized to issue military stores to veteran associations.

1. That whenever any lawfully-organized association of veterans from the late war in this state shall apply to the governor for the temporary loan of camp and garrison equipage, ordnance or other military stores, for any purpose whatsoever, not in conflict or violation of the peace of the laws of this state, or the laws of the United States, the governor shall examine into such application, and upon finding it a just and proper demand he shall have the power to order and authorize the issue of the stores asked for in the application; *provided, however*, the applicants be required to furnish good and sufficient bonds for the value of the stores issued, which bond shall first be approved by the governor, and to remain on file in the office of the quartermaster-general of the state.

Proviso.

Repealer.

2. That all acts or parts of acts inconsistent with this act, be and the same are hereby repealed.