

this note, upon the payment of the principal sum loaned by him, with legal interest, and his costs.

The act of 1845, ch. 352, has made a material change in the law of this state upon the subject of usury. Prior to that act, and under the law of 1704, ch. 69, securities tainted with usury were utterly void, and if the party lending money upon usurious interest attempted to recover it by legal or equitable proceedings, he would be wholly defeated, on the fact of usury being established. Under that act, however, if the debtor applied to chancery for relief, he would only be relieved, upon paying the principal due, with the legal interest thereon. In other words, he would be required to do equity, before he could ask for equity, which only required he should be relieved from the excessive interest.

But the act of 1845 extends this equitable principle, and provides, that in actions, both at law and in equity, bought by the creditor upon the usurious instrument, the defendant, the debtor, shall be made to pay the principal debt, with interest thereupon at the rate of six per cent. per annum; so that now usurious instruments are not, under any circumstances, avoided, but are made valid securities in all courts, and no matter by whom proceedings may be instituted upon them, to the extent of the principal sum and six per cent. interest.

Can it be said, then, assuming, for the sake of the argument, that the defendant, Lee, contracted with Baughman, Nicholson and Cannon, for the payment of more than six per cent. interest, that he is not a holder for value of this note. His contract is *not* void, but is a good and valid contract, to the extent of the sum loaned and six per cent. interest, and this is all he claims. He says, and his answer is to be taken as true, being responsive to the bill, that he gave value for this note paid at the time he received it; and it is no answer to say that his contract with the parties from whom he received it was usurious; because, if true, that does not avoid the contract, which is a valid security to the extent that he claims to recover upon it. He must, therefore, be looked upon as a holder for value, and entitled as such to avail himself of the note, taken without notice, and before it was due, to the extent he claims.