thereby rendered a suit necessary, they might have been charged with the costs of it; but it does not appear that the money was actually offered to the bank, and it cannot be doubted that if any such offer had been made it would have been accepted.

The plaintiffs being dissatisfied with this decision of his Honor, brought the cause to be re-heard before the full court. On the re-hearing

A. Crooks and *Blake* again appeared as counsel for the plaintiffs.

Strong, for the defendants.

VANKOUGHNET, C.—Although a perusal of the whole evidence in this cause connot fail to impress one with a strong feeling that in the dealings of this bank with the firm of Gillyatt, Robinson & Hall, an attempt has been made to elude the provisions of the recent statute of this province, prohibiting the taking by any bank of more than seven per cent. per annum for the loan and forbearance of money, I do not think the evidence here is of that clear and conclusive character to warrant relief being granted to the plaintiffs on that ground. When the legislature was repealing the laws restricting the amount of interest to be taken by private persons for the use of money, it saw fit to retain those restrictions in their full force, so far as the banking institutions of the country are concerned; feeling no doubt, that as there are conceded to those bodies vast and important privileges and advantages in the conduct of their business, they ought to be restricted in the amount of interest they should be permitted to charge; and there can be no doubt as regards them the laws against usury remain in force, and in a proper case will be applied with the utmost regour. And while at this point, it may be well to direct attention to the position which gentlemen having the control and management of the monied institutions of the country occupy; for I have no doubt that should at any time a serious loss be sustained by a bank in consequence of the managers or directors attempting to envade the usury laws, those gentlemen may be held personally bound as trustees for the general body of the stockholder to make good such loss.

In the present case, if the plaintiffs had succeeded in clearly establishing the alleged usury, relief could have been granted to them only on condition of submitting to pay the sum actually advanced, together with legal interest. I think the decree pronounced by my brother *Esten* must be affirmed, and the present re-hearing dismissed with costs, to be taxed by the master.

ESTEN, and SPRAGGE, V. CC., concurred.

DANIELS v. DAVIDSON.

Mortgage with power of Sale—Demurrer for want of equity, and for want of parties.

A person conveyed one acre of certain lands, part of 200 acres, in fee to one D., and afterwards mortgaged the 200 acres, including the one acre, to one S., which mortgage contained a power of sale. The conveyance to D. of the one acre was not registered till after the mortgage, but before the power was exercised. *Held*, that under a mortgage with a power of sale duly registered, any sale made under the power will cut out any deed intermediately made by the mortgagor and registered—and if the power of sale in such a conveyance can, under the registry laws, give to a deed executed by virtue of its priority over a deed made subsequently to such a conveyance, but made and registered prior to the exercise of the power, the same effect must be given to it in relation to a deed executed before the conveyance containing the power, but not registered until after that conveyance—Effect of Stat. 8 Vic., ch. 34, s. 6, with reference to a power of sale contained in a mortgage.

The bill in this case, which was filed by Alexander Daniels, set forth, that on the 25th day of April, 1846, one George P. Goulding, being seized in fee of all and singular that certain parcel of land, being lot number 19, in the 5th concession of the Township of Mariposa, in the county of Victoria, containing 200 acres, did, by indenture bearing date the 25th day of April, 1846, convey and assure for valuable consideration by a good and sufficient deed in fee simple unto the plaintiff, one acre of the south half of the said lot, and described therein as village lots numbers 1, 2, and 5, on the north side, and 5 on the south side in said lot number 19; that plaintiff did not cause his deed to be registered until the 12th day of August, 1847; that on the 18th day of June, 1846, the said George P. Goulding and Lewis S. Church, who was interested in the said lands by an indenture by way of mortgage, conveyed the whole of the said lot number 19, containing 200 acres, and including the said one acre so conveyed to plaintiff as aforesaid, in fee simple, for the sum of $4,135, to one Abraham Cutler, who, on the 20th day of June, 1846, caused the same to be registered previous to the registration of the deed to plaintiff before mentioned; that on the 14th day of December, 1846, the said Abraham Cutler assigned the said mortgage to the defendant Thomas Clark Street; that in the month of June, 1848, the said Thomas Clark Street, with full notice of the said deed to the plaintiff, under and by virtue of a power of sale contained in the said mortgage, sold and conveyed, or pretended to sell and convey, the said lot of land, containing 200 acres, including the said one acre so conveyed to the plaintiff as aforesaid to the defendant Samuel Davidson; that plaintiff never received any notice whatsoever from the said Thomas Clark Street, or from any person or persons on his behalf, of the said sale of the said 200 acres, nor was plaintiff aware of the said sale, or that the defendaut Samuel Davidson claimed title to the said land thereby, until recently, but was led to believe that the said Samuel Davidson was the assignee of a mortgage made by the said George P. Goulding and Lewis S. Church to one William L. Perrin.

Plaintiff submitted, that his said deed being duly registered nearly twelve months before the pretended sale by the said defendant Thomas C. Street, under the power in the said mortgage, the said Thomas C. Street sold and the several other defendants purchased, with full notice of plaintiffs title to the said land, and that by reason of the want of notice to plaintiff of the said sale, under the power contained in the said mortgage, the said sale and conveyance by the said Thomas C. Street to the said Samuel Davidson, and the subsequent purchases by the other defendants, were wholly void, and the said defendants took no title thereby, or if any, only subject to the right of plaintiff to redeem.

The defendant, Thomas Clark Street, demurred to this bill—generally, for want of equity as against him, and for want of parties, alleging that George P. Goulding and Lewis S. Church (as mortgagors) were necessary parties.

J. H. Cameron, Q.C., for the plaintiff.

S. Brough, Q.C., for the defendant Street.

THE CHANCELLOR.—This bill in effect alleges that the plaintiff, having acquired a title in fee to one acre, one of two hundred acres of land, from one George P. Goulding, by deed bearing date the 25th April, 1846, the said Goulding, and one Church, who had an interest in the said land, subsequently mortgaged the whole two hundred acres to one Cutler, to secure the repayment of $4,136, and that this mortgage was registered on the 20th June, 1847, prior to the registration by the plaintiff of his deed, which took place on the 12th August, 1847; that on the 14th December, 1846, Cutler assigned this mortgage to the defendant Thos. Clarke Street; that in June, 1848, the assignee, acting under a power of sale contained in the mortgage, but with full notice of the plaintiff's deed, sold, without notice to the plaintiff, the said land to the defendant Davidson, who has made sales of portions thereof to the other defendants.

The bill, while admitting and submitting that by reason of the prior registration of the mortgage, the plaintiff's deed of the one acre became in respect thereof a subsequent incumbrance, insists that inasmuch as the plaintiff's deed was registered prior to the sale to Davidson, the latter and all claiming under him bought with full notice of that deed; and that by reason thereof, and of the want of notice to the plaintiff of the intended sale under the power, the same is as against him inoperative, and he claims the right to redeem.

To this bill the defendant has demurred for want of equity, and on the ground that the mortgagors ought to be a party to the bill.

On the argument, Mr. Cameron, Q. C., very properly abandoned the position assumed by the bill, that notice to the plaintiff of the sale, if it could be made at all under the mortgage, was requisite, as it does not appear that there was any stipulation for notice in the power of sale; but he strenuously and ably urged—and I was much impressed with the argument—that the deed to the plaintiff having been executed before the creation by the mortgage of the power of sale, and having been registered before the execution of the power, the sale under the latter could not have priority over