that these facts must be alleged and proven with as much distinctness in this court is in a court of law. The allegation, as it stands, is a mere general allegation of usury, this, as in the case of a general charge of fraud, is insufficient, as the defendants are in reality ignorant of the case to be made, and are unprepared to meet it.

A Crooks, for the plaintiffs.—The statements in the bill follow substantially the words of the act, (22 Vic., ch. 58.); which is sufficient; the particularity insisted on by the other side, is only required where the parties to the transaction are themselves the litigants, not where the objection is taken by strangers.

Willes on Pleading, page 175; *Bond* v. *Bell*, 4 Drew. 157; *Mansfield* v. *Ogle*, 7 D. M. & G. 181. *Thibault q t.* v. *Gibson*, 12 M. & W. 88; *James* v. *Rice*, 1 Kay, 231. were amongst other cases referred to.

[Estes, V. C.—I think as between a stranger and a party to the transaction the usury is stated with sufficient particularity, and that the evidence ought to be received.]

Afterwards the evidence was proceeded with, the principal witnesses being Robinson, and the manager of the bank. Robinson in his evidence, after enumerating several notes discounted by his firm at the bank, and the amount of discount charged on each, stated that the bank still held one of these notes, that the funds of this note were placed to his credit by the bank, the rest having been retired; that the proceeds were placed to his credit by the bank. With a portion of them he purchased a draft on New York for $1000, from the bank, at 1 per cent. premium; that he had no occasion to purchase the draft—did not desire to remit funds to New York - that he believed Mr. Cameron, the cashier, was aware of this fact. Mr. Cameron always told him that it did not pay them to discount at 7 per cent; that they would not do so. It was thoroughly understood between Mr. Cameron and him that he should take drafts on New York, or Montreal, on the discount of bills or notes, and the draft in question was taken in persuance of the general understanding. "When I presented bills for discount at the bank Mr. Cameron frequently told me that it did not pay them to discount at 7 per cent." Mr. Cameron stated this frequently, but that it came to be understood between them that the firm should take drafts on discounts; it was commonly done, Mr. Cameron always reminding witness that he must take drafts on his applying for discounts. Mr. Cameron instructed the book keeper what premium to charge; had no voice in fixing the rate of exchange. When the discount in question took place the understanding had been thoroughly established, and the draft was taken in pursuance of the general course of dealing Sometimes these drafts were redeposited at par, sometimes he sold them on the street. The witness further stated that on the 17th of October, 1860, the firm obtained a discount from the bank, the proceeds of which, $1483.40, were placed to their credit, with which proceeds they purchased a draft on Montreal for $1500, for which they paid three-forth per cent, premium, viz., $11 85, the ordinary rate of exchange on Montreal about that time at the bank being one-forth per cent as witness knew, from having purchased drafts for cash about the same time. That on the 31st of October, 1860, they obtained a discount from the bank, and with the proceeds purchased a draft on Montreal for $1600, at three-forths per cent., which witness believed he re-deposited at par on the same day, on which day there was a large amount at the credit of the witness; about the same time the witness believed he purchased drafts from the bank at one-fourth per cent. premium. This witness stated other transactions much to the same effect, and during all this time the firm had purchased drafts from the bank on New York and Montreal, as they needed them for cash at one-half per cent. on New York, and one forth per cent. on Montreal.

The manager of the bank, in his evidence, swore that one of the directors stated to him and the president of the bank that Gillyatt, Robinson & Hall had large transactions in the States, and would require, in the course of their business, a large amount of New York funds, and in this representation agreed to take their account and paper that would be satisfactory; that Robinson confirmed this statement afterwards, and stated to witness that they would require a large amount of New York funds to pay for their purchases in Boston; that this was the inducement to taking their account. He denied any arrangement with Robinson or his firm that they should take drafts on New York or Montreal, on discounts, otherwise than that the bank understood they would require drafts on New York and Montreal in the conduct of their business; that the rate of exchange on those cities is regulated by the supply and demand; that there is no fixed rate—it varies sometimes daily. The banks charge different rates constantly in the same day; that Robinson was generally charged three-fourths per cent. for drafts on Montreal, although all the customers of the bank were not charged that rate—the rate charged each individual depending entirely upon the nature and state of his account; that the bank had different rates for different parties; a stranger buying would be charged the rate marked on the counter, which is so marked for the day—sometimes for the hour. A customer requiring heavy discounts might be charged a higher or lower rate than marked on the counter, according to the state of his account. The other evidence materially bearing on the case is stated in the judgment.

At the hearing of the case,

A. Crooks and *Blake* for the plaintiffs.

The error into which the other side has fallen, is in treating this suit as one for redemption: this it clearly is not, but simply one to compel the perfecting of the title of the plaintiffs to the bank stock held by them as security. The rule that a mortgagor, in coming to impeach a mortgage for usury, is bound to tender the principal sum advanced and legal interest, does not apply when the same relief is sought by a second mortgagee. *Belcher* v. *Vardon (2 Coll. 162)*; *Fitch* v. *Rockport (1 McN. & G. 184)*; *Cole* v. *Savage* (10 Page, 583).

As to the fact of the usury having been committed, it is not necessary to prove a direct contract or agreement; that, in many instances, could never be proved. When parties contemplate entering into such an agreement some devise or cloke is invariably resorted to, and the question for the court to decide is, whether a jury, looking at all the circumstances of the case, would or would not say that usury was intended. By the statute the bank cannot take a higher rate of premium for its drafts when a discount is required to purchase than when cash is paid; this would clearly be in violation of their charter, and the act is equally violated by their requiring a draft to be taken when not wanted by the party, as when a draft is wanted by their demanding a rate higher than that usually asked. When goods were furnished in whole or part the onus of proving that the goods were sold at the market value was upon the lender: here drafts were taken by the firm which they did not require at an increased premium; in other words, goods were sold to them above their market value. *Harris* v. *Boston* (2 Camp. 348); *Lowe* v. *Waller* (2 Doug. 736); *Pratt* v. *Wiley* (1 Esp. 40); *Harrison* v. *Hannel* (5 Taunt. 780).

Mowat, Q.C, and *Strong*.—The rule with respect to the necessity for a party seeking to impeach a security on the grounds of usury tendering the amount of principal and legal interest, is greatly strengthened by the recent alteration of the law regarding usury, for if that rule prevailed at a time when usury was viewed with so much disfavour, still more will such a rule be upheld and allowed to prevail now that the law has been so much relaxed; and here it is contended that the bank has a lien, and it is immaterial how that lien is created, whether by law or act of the parties, the same rules will apply. The *Upper Canada Building Society* v. *Rowell* (19 U. C. Q. B. 124). *Commercial Bank* v. *Cameron* (9 U. C. C. P. 378), shew that the courts will take into account the fact of the relaxation of the usury laws, although in strictness it might be thought that the particular transaction might have been an evasion of the law.

The evidence in the case does not establish that when the particular discounts now impeached were made the firm should take drafts for the proceeds of such discounts; it was never made a condition of their obtaining a discount that drafts should be purchased by them, nor was any agreement made that they should pay more than the current rate of premium, nor that a draft should be taken when not required by the parties. The evidence shews that the drafts purchased were not for the same amounts as the discounts, and not purchased on the same day.