found to be a mortgage, it must be treated as always remaining a mortgage and nothing but a mortgage—"once a mortgage always a mortgage"—and is therefore redeemable notwithstanding any agreement to the contrary (*t*).

It was only a different application of the paramount principle to state in the form of a second rule that a mortgagee should not stipulate for a collateral advantage which would make his remuneration for the loan exceed a proper rate of interest (*u*). The third form in which the principle was stated was that any stipulation which restricts or clogs the equity of redemption is void (*v*).

5. Stipulation for a collateral advantage.—The second rule, which prohibited a mortgagee from stipulating for a collateral advantage, was founded upon the statutes against usury. A stipulation of this kind was in equity held void as being contrary to the spirit of these statutes (*w*). The rule was by its nature confined to mortgages to secure the repayment of borrowed money, and the stipulation was void *ab initio* on the ground of supposed public policy. The rule had nothing to do with an equity of redemption based on relief against forfeiture, because it was enforceable before as well as after default. Since the repeal of the usury laws there is no reason why mortgages to secure loans should be on any different footing from other mortgages or why

(*t*) A modern case in which it was attempted virtually to make a mortgage irredeemable is *Fairclough* v. *Swan Brewery Co.*, [1912] A.C. 565. A clause in a mortgage of a lease for twenty years provided that without the mortgagee's written consent the mortgage debt should not be wholly paid off till a date within six weeks of the expiration of the lease. It was held that the mortgagor was entitled to redeem. *Cf. Manitoba Lumber Co.* v. *Emmerson*, 1913, 18 B.C.R. 96, 14 D.L.R. 390.

(*u*) See heading number 5.

(*v*) See heading number 6.

(*w*) Throughout the period in which the Court of Chancery was formulating its doctrines in relation to mortgages there were in force in England statutes limiting the rate of interest which could be legally charged for money lent. The last of these usury laws was repealed in 1854 by the statute 17 & 18 Viet. c. 90. The leading case as to a stipulation for a collateral advantage was formerly that of *Jennings* v. *Ward*, 1705, 2 Vern. 520, 18 R.C. 365, in which Sir J. Trevor, M.R., said, "A man shall not have interest for his money and a collateral advantage besides for the loan of it, or clog the redemption with any by-agreement." *Cf.*, the notes in 2 W. & T.L.C. Eq. 23*ff*, to the case of *Howard* v. *Harris*, 1683, 1 Vern. 190.