

gages, is fully covered by the first mortgage, if even that sum be due, and that said complainants paid no legal consideration for said second mortgage, and that they are not entitled to receive the amount thereof," &c. Much of the argument of the solicitors has been directed to the question, whether this answer of the White Hall Company does properly set up the defence of usury, as against the last mortgage; and, notwithstanding issue has been joined upon the answers, which must be regarded as a waiver of any mere technical objection to the form in which the defence is presented, I am of opinion, that this answer cannot be considered as relying upon usury. There can be no doubt that usury may be pleaded or relied upon in the answer; and this is not disputed, but still, as was said in *Hood vs. Inman*, 4 *Johns. Ch. Rep.*, 437, and the principle received the sanction of the Court of Appeals, in *Chambers vs. Chalmers et al.*, 4 *Gill and Johns.*, 420, "pleadings in chancery should consist of averments or allegations of fact, and not of inference and argument." But in this answer, the respondent, though he states that the debt, secured by the second mortgage, was additional compensation for the use of money, the principal and interest upon which was already secured; and although, from this statement, it might be inferred that the mortgage was to be impeached for usury, the complainants are not, by positive averment, notified of that defence, I am of opinion, that the *statute* against excessive usury, must be pleaded or relied upon in the answer, and that it will not do to state circumstances which may lead the opposite party to infer that he is to meet that defence. In the case of *Chambers vs. Chalmers*, already referred to, the court say, that "unless the bill itself states a case so clearly usurious, that no inference or intendment can help it, then, perhaps, the court would, at the hearing, dismiss it, no matter what might be the defence." "The *statute* against usury must always be pleaded, or relied upon in the answer, and for the same reason, that requires pleading of the statute of limitations." And the 1st section of the act of 1845, ch. 352, is in manifest conformity with this view, and would seem to leave no doubt upon the subject.