JOHN DOUB
vs.
ABRAHAM BARNES ET AL.

DECEMBER TERM, 1847.

[EQUITY—WAIVER OF JUDGMENT LIENS—EVIDENCE—MULTIFARIOUSNESS—USURY—PRACTICE.]

THE defendants conveyed, by deed, a large amount of real and personal property, to trustees, in trust, to sell the same, and out of the proceeds to pay the claims of their creditors, without priority or preference, except as the same might exist by law. The trustees, in execution of their trust, sold parcels thereof to the complainant and others. At the time this deed was executed, there were unsatisfied judgments, to a large amount, against the grantors, upon some of which, writs of *scire facias* were issued, and *fiats* rendered against the original defendants in the judgments, and the *terretenants*, the purchasers from the trustees, and upon these *fiats* writs of *fieri facias* were issued and laid upon the lands purchased by the complainant. Upon a bill to restrain proceedings upon these executions, it was HELD—

That if the judgment creditors assented to the deed of trust, and by their conduct induced the complainant and others to become the purchasers of the land bound by their judgments, and to believe that they would look to the trustees for the payment of their claims, and not to their judgment liens, such conduct would furnish a valid equitable defence.

To allow the judgment creditors, after such a course of conduct, to enforce their judgments against the purchasers, would be to permit them to perpetrate a fraud upon the latter. Upon such a state of facts, the purchasers would not be bound to see to the application of the purchase money.

A defence, founded on such circumstances, can only be rendered available in a court of equity, on the ground of fraud.

An injunction can only be dissolved by positive contradictory averments in the answer; and, an answer founded upon hearsay is not sufficient to remove the complainant's equity, though resting upon information derived from others, it denies the facts out of which that equity arose.

Upon motion to dissolve, credit can only be given to the answer, in so far as it speaks of responsive matters, within the personal knowledge of the defendant, and unless, so speaking, the equity of the bill is sworn away, the injunction cannot be dissolved.

Although an answer, founded upon hearsay, is not to be treated as an answer resting upon personal knowledge, it is sufficient to put the complainant upon the proof of the averments of his bill.

An attorney either in law or in fact, would not have the power to bind his principal by an agreement to surrender his lien upon the land, and to look exclusively to the trustees, without an express authority for that purpose.

Where a party executing a deed made a formal proposition to his creditors, in writing, which, some accepting, the trust was created, and upon a dividend being made, a creditor received from the trustees an equal share with the