

rest—such creditor must be considered as affirming the deed, and, of course, bound by it.

But where a deed, in which all legal priorities were preserved, was executed, without any proposition made to creditors, or any previous consultation or agreement with them, a creditor, by receiving money from the trustees in part payment of his judgment, does not thereby render the provisions of the deed binding upon him, nor waive the lien of his judgment.

A party who has assigned a judgment, without recourse, except as to his right to assign and transfer the same, is a competent witness for the assignee, in a suit to enforce the judgment; the warranty extending only to the *right* to make the assignment.

Where an original and amended bill merely unite two cases of complaint growing out of the same transaction, affecting the same question of right, being the right of the complainant to relief against the judgment of the defendant, they cannot be regarded as obnoxious to the objection of multifariousness.

A party who has paid a judgment, founded on a usurious debt, may ask to be relieved as to the amount paid beyond what was legally due and recoverable; and this may be done without paying or offering to pay any thing, because the application for relief is predicated upon the averment, that too much has been already paid.

A purchaser from the mortgagor may avail himself of the defence of usury, to defeat the action of the assignee of the mortgagee.

If the assignors, in this case, might require the defendant to repay the excess which he may have received over his debt and legal interest, the assignee, the complainant, who claims under and through them, may do so likewise.

[On the 11th of October, 1839, Abraham Barnes, being indebted in various sums of money, and Melchior B. Mason and John Thompson Mason, being bound with him for a portion of his debts, they conveyed, by deed of that date, a large amount of real and personal estate to William Price and David G. Yost, in trust, out of the proceeds and avails thereof, to discharge the claims of their creditors, without priority or preference, *except as the same might exist by law*. The trustees, in execution of their trust, proceeded to sell parcels of said trust estate to divers persons, and among others to Doub, the complainant, to whom they sold, on the 25th of March, 1840, a portion of the estate of John Thompson Mason, conveyed to them as aforesaid, for a sum exceeding \$12,000, and on the 21st of October, 1843, another portion of the same for upwards of \$900.

At the time the deed of trust was executed, there was a large amount of unsatisfied judgments against Barnes individually,