

by Mr. Yost, who was the attorney of these creditors, for sums of money stated therein to have been received by him from the trustees in part payment of these judgments. And these payments, it is said, have the effect of rendering the provisions of the deed of trust binding upon the creditors. The defendants, Mason and his wife, have excepted to the admissibility of these receipts, and it is by no means clear, that the exception is not well taken. But, assuming them to be competent evidence, upon what principle is it that they shall have the effect of depriving the creditors of the lien of their judgments? It does not appear in the first place, that the money thus receipted for by Yost, ever reached the hands of his clients, and nearly five years afterwards, when *fiats* were rendered on writs of *scire facias* upon these judgments, no credit was asked, or given for these payments. And, in the next place, if the money was paid over by Yost to his clients, there is certainly no evidence to show that they knew that it arose from the proceeds of sales made by the trustees under the deed, which was only executed the October preceding the payment. The case of *Moale vs. Buchanan et al.*, 11 *Gill & Johns.*, 314, is relied upon to show, that a creditor who accepts a payment from trustees, must be considered a party to the deed under which they act, and of course bound by it. But that case is totally unlike the present. There, the party executing the deed made a formal proposition to his creditors in writing, which some of them accepting, the trust was created, and upon a dividend being made by the trustees, the creditor in question received an equal share with the rest. And upon this ground the Court of Appeals said he must be considered as affirming the deed, and the contract upon which it was executed. But here the deed to Price and Yost was executed without any proposition whatever being made to the creditors, or any previous consultation or agreement with them; and by which all legal priorities were preserved; and the trustees, consequently, in the discharge of their duty, were bound to extinguish the liens as they accrued. No dividends, therefore, have been or ought to have been struck among the creditors, but the claim of each paid according to its date. If, therefore,