

the Messrs. Tiffany received the money in question from Yost, and knew that it was received by him from the trustees, they would have had a right to regard it as a payment growing out of their relative position as judgment creditors, and not on account of any advantage secured to them by the deed. Their receipt, therefore, of this money, if they did receive it, with knowledge of the source from whence it came, (of which however there is no evidence,) could not render it unconscientious in them now to insist upon the enforcement of their judgments, —as the Court of Appeals say, would have been the case, if the creditor in the case of Moale and Buchanan had been permitted to proceed upon his judgment, after receiving dividends under the trust.

I do not, therefore, think that an equity can be made out against these judgments, upon the footing of the receipts of Mr. Yost, either taken by themselves, or together, with the letters of the 27th of April, and 9th of June, 1843. Looking to the dates as well as the terms of those letters, I find it impossible to infer from them, those circumstances which the Court of Appeals have said must exist, to deprive the creditors of the rights secured them by their judgments.

But, independently of all this, the Messrs. Tiffany have been examined as witnesses, and each declared that they did not mean, and never did agree, to accept the provisions of the deed, and surrender their liens as judgment creditors.

It is true, they have been excepted to as incompetent witnesses, but looking to the terms of their assignment to Mrs. Mason, I cannot very clearly see what qualifying interest they have in the event of the present controversy.

The assignment is without recourse to them, except as to their rights to assign and transfer the judgments.

Their right to assign the judgments is one thing, but the rights which the assignee may assert under it is another; and, therefore, it by no means follows, that the assignors would be responsible to the assignee if it should turn out, that any thing had been done by the former, prior to the assignment, which de-