

Mr. Thomas was made a defendant to the original bill, as one of the purchasers of a portion of the land from the trustees, for which it was alleged he paid no money, the same being allowed to remain in his hands, under an impression that the trust fund, exclusive of the purchase made by Thomas, would be sufficient to discharge all the judgments of elder date than the one which had been recovered by Thomas himself against Barnes and the Masons, in 1839; and that, consequently, the consideration of the land purchased by Thomas would be properly applicable to the payment of the judgment held by him. The bill alleged, however, that this impression was so far groundless that the judgments on which executions had been issued and been levied on the land, purchased by the complainant of the trustees, were elder in date than the judgment recovered by Thomas, and that, therefore, equity required that Thomas should be made to pay the purchase money due from him, before the complainant should be called on a second time to pay for the land which he had purchased; and prayed relief accordingly.

After the answer of Thomas to this bill was filed, the complainant asked and obtained leave to file an amended bill, in which he alleged that the judgment recovered by Thomas was founded on a usurious contract, the nature of which is set forth in the bill; insisting, that if the judgment by reason of the usury is not to be regarded as absolutely void, it should only stand as a security for the sum actually and fairly due; and then prays for a discovery, and such relief as the case may require. The defendant Thomas demurred to this bill, 1st upon the ground, that it made no case which entitled the complainant to a discovery from, and relief against the defendant. 2nd, That the two bills, original and supplemental, contained multifarious matters, not proper to be blended in the same suit. 3rd, That the complainant has not tendered, or offered to pay, the amount actually due the defendant, with interest thereon. 4th, That the complainant has shown no title to seek a discovery, or obtain relief. And 5th, That if the defendant is answerable to any one touching the matters in the bill, the complainant is not the party to whom he is so answerable.