

With respect to this transaction, then, between the defendant, Thomas, and the trustees, two grounds of complaint are urged—that is, the transaction is impeached upon two grounds—one of which, conceding the judgment to be valid, insists that funds have been applied to its satisfaction which were applicable to the payment of elder liens. Whilst the other calls in question the validity of the judgment itself, because the debt, to secure which it was rendered, is founded upon a usurious contract. The bills, therefore, merely unite two causes 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. Such a bill I do not regard as obnoxious to the objection of multifariousness. *Story's Eq. Pl.*, 233, section 284.

The next ground of demurrer is, that the complainant does not by his bill, tender, or offer to pay, the amount of the debt actually loaned, with the interest thereon.

But, in this case the allegation is, that the defendant has already received more than the amount of his claim, with interest; and that at all events, without a discovery from him it is impossible to determine what the actual amount of his debt is; and, therefore, to say that the complainant shall not have a discovery as to the usury, without paying, or offering to pay, the principal debt and legal interest, is to deny relief altogether. In the case of *Jordan vs. Trumbo*, 6 *Gill & Johns.*, 106, the Court of Appeals say, that a party who has paid a judgment founded on a usurious debt, may asked to be relieved, "as to the amount paid, beyond what was legally due and recoverable," and of course 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.

The next objection is, that if the defendant is answerable to any one touching the matters contained in the amended bill, he is not answerable to the complainant.

This objection, it is presumed, proceeds upon the ground, that Barnes and the Masons alone could ask to be relieved against this claim, as founded upon a usurious consideration.