

The complainant is the assignee of these parties, and the question is, whether, occupying that position, he may not set up usury against the judgment of Thomas, the payment of whose claim has operated, or is likely to operate, to his prejudice.

In the case of *D'Wolf vs. Johnson*, 10 *Wheat.*, 369, the Supreme Court was supposed to have decided, that the purchaser of an equity of redemption could not show usury in the mortgage, to defeat a foreclosure; but the case of *Lloyd vs. Scott*, 4 *Peters*, 205, shows that the point was not involved in *D'Wolf vs. Johnson*, and the case reported in *Peters* proves that a purchaser from the mortgagor may avail himself of the defence of usury, to defeat the action of the assignee of the mortgagee. The right of the alienee of the mortgagor to avail himself of the defence of usury, is maintained by the Court of Appeals in *Trumbo vs. Blizzard*, 6 *Gill & Johns.*, 18, and I am not able to perceive why, if Barnes and the Masons might require this defendant to repay the excess which he may have received over his debt and legal interest, the complainant who claims under and through them, may not do so likewise.

Acting upon this impression, the demurrer of the defendant, Thomas, will be overruled, and he will be required to put in a full answer to the bill, within some reasonable time to be fixed by the order of the court. *Daniel's Ch. Pr.*, 674, 675.

The only remaining question is one of contribution among the several vendees of the lands embraced in the deed of trust. The Court of Appeals have said, that judgment against the terretenants gives the plaintiff at law a right to sell as much of the land as may be necessary to satisfy his claim, and if any one is injured he may resort to a court of equity to compel all who stood *in equali jure* to contribute; but that the plaintiff at law is not bound to suspend his execution until the question of contribution shall be settled.

The statements and prayers of this bill are, I think, sufficient to found a decree upon for contribution, as among these vendees; and they will, therefore, be required to contribute in proportion to the value of the land conveyed to each respectively.