Allegany mortgage, without controvening the act of 1825, ch. 50. There being two securities for the same debt, and that debt being prior in point of time, the defendants have no right, under the circumstances, to pay off the latter items of the Baltimore mortgage first, so as – throw all the prior items, if any, in the Allegany land.

7th. That in any event, accounts A, B and C, are erroneous, because the Alleghany mortgage is fully paid off.

8th. That the whole series of mortgages being fraudulent and void, no claims on them should be allowed.

R. W. GILL,
S. J. K. HANDY, Att'y for Comp.

Accounts H, No-. 1, 2, 3, 4, 5, to follow here as a part of these exceptions to auditor's report and accounts.

R. W. GILL, Att'y for Comp.

H, No. 1.

Dr. *The Mortgaged Estate of WILLIAM SCHLEY, in account with ISRAEL GRIFFITH, per Exhibit No. 3, dated 22d March 1845, of Personal Property in Baltimore.*

To note of W. Schley's, dated 6th March 1845, at 60 days, due 5–8 May 1845, for - - - - -		2000 00
To same, *a* 4 mos., due 6–9 July, for - - -		2000 00
To same, *a* 6 mos., due 6–9 Sept., for - - -		2000 00
By note at 60 days, paid as per answer, - - -	2000 00	
By note at 4 mos, paid - - - - -	2000 00	
By assignment of policy of insurance, - - -	1574 00	
By balance, - - - - - -	426 00	
	6000 00	6000 00

H, No. 2.

The exhibit No. 3, for land in Allegany county court, was never recorded, and is therefore no security for any purpose.

H, No. 3.

Dr. *The Mortgaged Estate of WILLIAM SCHLEY, in account with ISRAEL GRIFFITH, as per Exhibit No. 7, dated 21st April 1845, for the Alleghany land.*

To the three notes of W. Schley, 2, 4, and 6 mos., mentioned in exhibit, No. 3, - - - - -		6,000
To note of W. Schley 21st Ap'l, *a* 6 mos., due 21–24 Oct.,		2,000
To same, *a* 8 mos., due 21–24 Dec. - -		2,000
By payments as per H, No 1, on ac't of exhibit No. 3, -	5,574	
By cash on ac't of note due 21–24 Oct., - - -	1,000	
By payment of 12th Nov. 1845, - - - - -	1,000	
By payment surplus, - - - - -	92 30	
By cash 16th Sept. 1846, - - - - - -	799 10	
By balance, - - - - - - -	1,534 60	
	$10,000 00	$10,000 00

H, No. 4.

The account under exhibit No. 9, will be considered as under exhibit No. 7; so of exhibits No. 10, 11, 12, 13, 14; Nos. 18 and 19, were not executed.

H, No. 5.

Dr. *The Mortgaged Property aforesaid, per Exhibit No. 20, which relates only to the Personal Property 4th Sep. 1845.*

To 3 notes in exhibit No. 3, - - - -		6,000 00
To 2 notes in exhibit No. 7, - - - -		4,000 00
To note of Lewis Kemp, 22nd July '45, *a* 90 ds., - -		1,500 00
To W. Schley's note, 4th Sept. 1845, 2 ms., - -		2,000 00
To F. A. Schley's acceptance, 4 mos., - - -		2,000 00
By credits as per ac't H, No. 3, on Ex. No. 7, - -	8,465 40	
By balance, - - - - - -	7,034 60	7,035 00
	15,500 00	15,500
By balance H, No. 1, - - - - -	426	
3, - - - - -	1,534 60	
5, - - - - -	7,034 60	
	$8,995 20	

If the 3 notes in H, No. 1, for 6000, are disallowed, then there will be nothing due on exhibit No. 3.

If disallowed in ac. H, No. 3, in relation to exhibit No. 7, there will be no lien on the Allegany land.

If disallowed in ac. H, No. 5, in relation to exhibit No. 20, then there will only be $1035 due on the personal property.

And afterwards, to wit, on the 8th day of May 1848, came the complainants aforesaid, by their solicitor aforesaid, and filed in the said cause their further exceptions, in the words following, to wit:

R. W. GILL, TRUSTEE, ET AL.,
vs.
HANDY, ET AL.
} In Chancery.

The complainants further except to the auditor's report in this cause, because it does not allow them the sum of $1000, and $1000 paid by Schley to Griffith out of the trust funds received by said Schley, belonging to the complainants, in the month of October 1845.

R. W. GILL, Att'y for Comp't.

And afterwards, to wit, on the 10th day of May 1848, the chancellor filed in the said cause his opinion, in the words following, to wit:

RICHARD W. GILL, TRUSTEE OF JOHN M. DUNCAN, ET AL.,
vs.
ISRAEL GRIFFITH & WILLIAM SCHLEY.
} In Chancery.—March Term 1848.

This case has been argued before me by counsel, and now comes up for decision.

It appears by the proceedings, that on the 20th of December 1844, the defendant Schley was, by the order of this court appointed trustee, to receive and invest certain sums of money then under the control of the court, belonging to Ann McKim Handy and Eliza McKim Duncan, and that having qualified by giving the bond required by the chancellor's order, he did receive at various periods, commencing on the 3d of January 1845 and terminating on the 25th of November of the same year, the sum of thirty thousand, eight hundred and thirty-two dollars. Of this amount, upwards of twelve thousand dollars were received in the months of October and November, 1845. The money not having been invested, and the said Schley having failed to bring the same into court in compliance with an order to that effect, passed on the 29th June 1846, the complainant Gill was, on the 6th of July 1846, appointed trustee in his place, and duly qualified by giving bond as such; and thereupon he caused writs of fieri facias to be issued upon the order against Schley on the 24th of July 1846, directed to the sheriffs of Baltimore, Allegany, Washington, and Frederick counties, which writs were received by the sheriffs, but were ineffectual for the reasons stated in the bill.

It further appears, that on the 22d of March 1845, the defendant Schley, for the purpose of securing the defendant Griffith against a liability incurred by the latter on account of the former, to the amount of six thousand dollars, conveyed to him by way of mortgage, the personal property of the grantor, of every description, in the city of Baltimore; and a tract of land in Allegany county; with the conditions, that the conveyances should be void, in case Schley should pay at maturity the notes which Griffith had endorsed for him. Afterwards, on the 21st of April of the same year, a new mortgage of the land in Allegany county was given, in which it was recited, that in addition to the three notes for $2000, each mentioned in the original mortgage, Griffith, the mortgagee, had, on the day of the execution of the last mortgage, endorsed two other notes for $2000 each, for the accommodation of Schley; and that this last mortgage was given to secure the payment of all the notes: the two first mortgages, though duly executed and acknowledged, were not recorded, but the last mortgage of the land in Allegany county, was recorded on the 27th of May 1845.

It also appears, that the mortgage of the personal estate of Schley was not recorded, but was renewed from time to time, at periods generally within, but occasionally after an interval of more than twenty days, from the 22d of March 1845 to the 4th of June 1846, which last mortgage, executed on that day, was recorded on the 18th of the same month and year.

The state of the account, and the amount of the liabilities of the defendant Griffith, for the defendant Schley, appears to have fluctuated from the origin of the transaction in March 1845, to the 4th of September of the same year; but no new responsibility seems to have been incurred after this latter period: and in the last mortgage of the 4th of June 1846, all of the notes endorsed by Griffith at different times, up to and inclusive of those endorsed on the 4th of September 1845, are recited and secured to be paid.

The plaintiff in his bill alleges, that it was a part of the original agreement of these parties, mortgagor and mortgagee, that the instruments in question should not be put upon record, but that they should be kept secret; and yet, that the mortgagor should retain possession of the property, to the end, that he might be believed to be the owner thereof, to the great prejudice of the said cestui que trusts.

The answer of the defendant Griffith upon this point, denies that the deeds were withheld from the record in consequence of any agreement between Schley and himself, or for the purpose of keeping the existence of them secret; or that he, the defendant, knew or suspected that Schley had any reason for desiring that they should not be recorded, other than the natural desire of avoiding the mortification of discovering one's temporary embarrassments to the society in which he daily moves; and he averred, that his confidence in the integrity and professional attainments of the said Schley, assured him, that there could be no circumstance connected with his pecuniary condition, to render it improper in Schley to make, or the respondent to grant, his request in this respect.

The answer then speaks of the execution of the new mortgage upon the land, in April 1845, and of the enrollment thereof, which the defendant avers he caused to be made in the exercise of his legal rights; he supposing the request of Schley was chiefly prompted by his great desire to keep the bill of sale of his personals from the records of the city in which he resided; and he presumed he would gratify the said Schley sufficiently, by retaining said bill of sale from record, which he did accordingly, until the month of June 1846, when he heard, for the first time, of the extent of said Schley's embarrassments, and had cause to believe that the enrollment thereof was necessary.

This answer, then, whilst it denies any agreement between the parties, or obligation on the part of Griffith, to keep the bill of sale from the record, admits the request of Schley, that he should do so, and his assent to or acquiescence in that request until the exigency arose, when, in his judgment, his own safety depended upon his placing the instrument upon the records for public information. The bill of sale of the personal estate, it has been already remarked, was renewed from time to time, within periods usually within, but occasionally running a little over twenty days, from the first in the series, dated the 22d of March 1845, until the last, of the 4th of June 1846; and further, that no new consideration