

the last mortgage, except to the amount to which the erroneous modes of calculation may have swelled the sum secured by it.

I do not think the last exception taken by the defendant to the statement of the auditor can be maintained. The entire mortgaged premises, and the sum intended to be secured by the mortgage are assigned, and as between the mortgagor and the assignee, I am not aware of any principle which will enable the former to make such an objection to the payment of the entire debt.

It is, thereupon, ordered, this 24th day of January, 1848, that this case be, and the same is hereby again referred to the Auditor, with directions to state another account for the purpose of ascertaining the amount due upon the mortgage in the proceedings mentioned, from the defendant to the late Beale Duvall, executed on the 28th of October, 1834, in which account such corrections shall be made of the settlement, marked exhibit No. 2, as shall make it conform to the views herein expressed, and the amount to appearing to be due with interest thereon from the date of the settlement, to the date of the mortgage, shall be taken as the sum secured by the latter, and the basis of the account now to be stated. All exceptions at variance with this order are overruled.

[No appeal was taken from this order.]

JAMES MALCOM, PERMANENT
TRUSTEE OF HENRY KEENE
vs.
WASHINGTON HALL, JR.

DECEMBER TERM, 1847.

[DEED OF TRUST FOR BENEFIT OF CREDITORS—PREFERENCE—INSOLVENT
SYSTEM.]

It has been settled by the highest authority in this state, that a debtor in failing circumstances, may prefer one creditor to another, by a transfer of his property made in good faith; and that, in similar circumstances, a transfer by a debtor of his whole estate to trustees, for the equal benefit of his creditors, is free from objection.