

Deeds.

An. Code, 1924, sec. 35. 1912, sec. 34. 1904, sec. 33. 1888, sec. 33. 1785, ch. 72, sec. 11. 1791, ch. 79, secs. 2, 3. 1792, ch. 41, sec. 3.

36. In case any deed shall be executed, to the validity of which, recording is necessary by law, and such deed hath not been recorded agreeably to law, without any fraudulent intention of the party claiming under such deed, the court shall have full power and authority, upon application of the party claiming under such deed, and upon such notice being given to the party making such deed, his heirs, devisee, executor or administrator, as the court may direct, and being satisfied that the party claiming under such deed has a fair and equitable claim to the premises therein mentioned, to order and decree, without the appearance or hearing of the defendant, that such deed shall be recorded; and when such deed is recorded, it shall, in pursuance of such decree, be taken and considered in all courts of law and equity against the party making such deed, his heirs, devisees, executors and administrators, in the same state, and to have the same effect and consequences to all intents and purposes, as if such deed had been recorded within the time prescribed by law; but such deed shall not destroy, or in any manner affect the title of any purchaser of the same thing or premises in case of a purchase made after the date of such deed, and without notice of such deed by the person making such after-purchase, whether such purchase be by contract or by deed recorded agreeably to law; nor shall such deed, though recorded as aforesaid, in any manner affect the creditors of the party making such deed, who may trust such party after the date of the said deed. The provisions of this section to apply to non-residents as well as to residents, and to infants and persons of unsound mind.

Subsequent purchasers and creditors.

The registration of a deed without the order of court required by this section, does not give constructive notice to subsequent purchasers or creditors; and the paper must be considered as a mortgage unrecorded. However, if the paper is *bona fide* and one which the court would order recorded under this section, it is valid as between the parties and gives priority over creditors of the grantor whose debts were contracted before its date, and over subsequent creditors with actual notice. *Stanhope v. Dodge*, 52 Md. 493; *Wally v. Long*, 56 Md. 571; *Pfeaff v. Jones*, 50 Md. 263; *Harding v. Allen*, 70 Md. 399; *Dyson v. Simmons*, 48 Md. 220; *Sixth Ward Bldg. Assn. v. Willson*, 41 Md. 514. And see *Bowie v. Stonestreet*, 6 Md. 429.

This section applied as to subsequent creditors without notice. *Cissel v. Henderson*, 88 Md. 576; *Nally v. Long*, 56 Md. 571; *Hoffman v. Gosnell*, 75 Md. 590; *Dodge v. Stanhope*, 55 Md. 115; *Stanhope v. Dodge*, 52 Md. 491; *Pfeaff v. Jones*, 50 Md. 263; *Dyson v. Simmons*, 48 Md. 220; *Sixth Ward Bldg. Assn. v. Willson*, 41 Md. 514; *Pannell v. Farmers' Bank*, 7 H. & J. 205; *Carroll v. Norwood*, 1 H. & J. 167; *Gill v. Griffith*, 2 Md. Ch. 284; *Brooks v. Dent*, 1 Md. Ch. 528; *Coombs v. Jordan*, 3 Bl. 325.

A deed not recorded in time, is not operative as to subsequent creditors until recorded, but thereafter divests the powers of the grantor over the property just as if it was recorded in time. *Dodge v. Stanhope*, 55 Md. 115.

The rule prescribed in this section will be applied where a mortgage recorded in time, was defectively acknowledged. Purpose of this section. Proof held not sufficient to charge subsequent creditors with actual notice. *Dyson v. Simmons*, 48 Md. 218. *Cf. Price v. McDonald*, 1 Md. 403.

The effect of this section and of art. 21, secs. 1, 14, 20, 33 and 34, is to protect the rights of subsequent creditors against a defective or unrecorded mortgage, where the claims under said mortgage are asserted at law, as well as in equity. *Sixth Ward Bldg. Assn. v. Willson*, 41 Md. 514.

Portion of this section giving subsequent purchasers without notice, a priority over a mortgage recorded under this section, applied. *Harding v. Allen*, 70 Md. 399; *Strigg v. Lyles*, 2 G. & J. 446. *Cf. Price v. McDonald*, 1 Md. 403.

Contention that a creditor of a mortgagor who knows of a prior unrecorded mortgage, has a stronger equity than a subsequent creditor who has no such knowledge, is in conflict with this section. *Ohio Ins. Co. v. Ross*, 2 Md. Ch. 33.

Recording of mortgage after six months' period does not operate as constructive notice, unless pursuant to order of court. *Kinsey v. Drury*, 146 Md. 230.