

of the state, and that therefore his purchase and possession cannot be decreed to be sold for the payment of the Mortgage debt.

It will be seen by examination of the Mortgage filed with the Bill, that it was executed on the 7th day of April 1848, two years after the passage of the Act of Assembly, of 1846 Chap. 271, and that there is an endorsement of an affidavit by the Mortgagor — That the Consideration set forth in the Mortgage was true and bona fide.

It is clear then upon the statements of the Original Bill, that as to all persons other than the Mortgagor, the Mortgage is a void instrument, and cannot effect the interest of a subsequent purchaser of the Mortgaged premises. But it is alleged in the amended Bill, and the fact is admitted by the answer, that the defendant Pearson had actual notice of the existence of the Mortgage, and that since his purchase he paid part of the money secured by it; There is no charge or pretence of fraud on the part of Pearson or anybody else in the execution of the Mortgage, and the Court is to look at this case free from any such ingredient. If this Mortgage had been properly executed as required by the act of 1846 there could be no doubt that the premises purchased by the Defendant Pearson would be liable for the debt intended to be secured by it — And this Court would have no hesitancy in passing a decree for the sale of it for that purpose. But can this Court, without a pretence of fraud on the part of any party to the cause, undertake to pass a decree for the sale of the property of a purchaser of the property intended to be mortgaged, because the purchaser had notice of the existence of an instrument void as to him and all the world except the maker of the instrument. If the enactment of the Legislature declares this instrument void, writing that Pearson could do, and no notice to him of the existence of such an instrument could make it otherwise than void. This may be illustrated thus; Suppose two persons in the presence of a third, the third one taking no part in the transaction, should conclude a contract by parole for the sale and purchase of a farm; no agreement in writing, no money paid, and no possession delivered; and afterwards the third party who witnessed all this should purchase the same farm the party who had made the parole contract to sell and pay for it, or be put into possession in pursuance of the contract, could the first purchaser by parole successfully assert his title to the property because the second purchaser had actual notice of his parole purchase and thus set aside the Statute of Frauds? There are cases to be found in the books where the Court of Chancery has relieved, even though the Statute of Frauds has not been complied with. Thus if a Testator intending to execute a will, every thing being done except the execution, and being at the point of death, the witnesses were sent for to attest the execution, and the heir by force kept them back, in such a case Equity would release. So a legacy though nearly verbal would be enforced if the devisee or executor prevented it from being put in writing.

In all these cases it is upon the grounds of fraud that the Courts interfere to give relief, and not upon the mere fact that a party had notice of the existence of a void instrument of writing. Pearson's knowledge that this instrument existed cannot make that a good and valid instrument which the law says shall be void and void. There is no fraud pretended or charged upon any of the parties to this cause. If Pearson had been guilty of fraud by which the defective execution of the Mortgage was brought about, it might present a different question. But the case standing free from such charge or pretence, the principles I have advanced arise from the object of the act of assembly. The Statute is framed not for the purpose of ascertaining the rights of parties against each other, or protecting them from fraud, but with a view to a purpose of public policy, and in such case no relief can be given in law or equity against the positive words of the Statute.