against all persons, whom the grantor might debar by any mode of common recovery, or by any ways or means whatsoever.

"By this Act," said the Court in Newton v. Griffith *supra*, "the ancient mode of docking estates tail by common recoveries is abolished, and power is given to any person in possession, &c., to grant, bargain, sell and convey the same in the same manner and by the same form of conveyance that a tenant in fee simple may." However in Key's lessee v. Davis, 1 Md. 32, the Court observed, "we do not mean under this Act to give to an ordinary deed of bargain and sale, by whomsoever or under whatever circumstances made, the same effect as a common recovery would have to dock an estate tail. If we did it would have the effect entirely to shut the door to all inquiry as to the circumstances, under which all deeds designed for the purpose of docking the estate tail were made, as well as all inquiry into the mental capacity of the grantor in such deeds, for the reason, that a common recovery suffered in person is conclusive of the mental capacity of him who suffers it and cannot be inquired into, &c. The Act can mean nothing more than that if the party, when he makes the deed for the purpose of docking the estate tail, is in such a condition of mental capacity as would have enabled him to suffer a common recovery or levy a fine at common law, or in other words to make a valid deed, then the deed would be conclusive upon him and all the world." In that case lands had been devised to the testator's widow for life, remainder to his son Thomas in tail, remainder to his son James in tail, remainder over. Thomas, the first tentant in tail, conveyed the land in fee by deed of bargain and sale, and died. It was held that James, the second remainderman in tail, could not impeach the deed on the ground that the bargainor was *non compos mentis* at the time of its execution, such a deed being voidable only and good against a privy in estate.

In Paca's lessee v. Forward, 2 H. & McH. 175, the question was whether a deed of tenant in tail, made especially to dock the entail but not indented, was a compliance with the Act. It was insisted that the deed could only operate by way of bargain and sale; it was not a feoffment, for no livery of seisin was made: nor could it operate as a release or grant of the reversion. And the Court was of opinion that indenting was indispensable, and that the deed could not operate as a covenant to stand seised for want of a proper consideration. The Code, however, now provides, Art. 24, sec. 23,[9] **94** (see the Acts of 1715, ch. 47, sec. 4, and 1794, ch. 57,) that *neither livery of seisin nor indenting shall be necessary to the validity of any deed, the effect of which latter provision is to declare that indentures and deeds poll shall be equally operative as conveyances of land, and parties may indifferently use either, where before the Act an indenture was required, see Phelps v. Phelps, 17 Md. 120. It was determined also in Matthews v. Ward, 10 G. & J. 443, that livery of seisin being no longer necessary to a feoffment, enrollment takes its place and is equivalent to it. It by no means, however, follows that a deed may operate indifferently as a bargain and sale or feoffment, although the operative words of each species of conveyance are used. It is a question of construction, depending upon the words employed, though by the practice and usage of the State bargains and sales, as modes of pass-

[9] Code 1911, Art. 21, sec. 23.