

resides, within twenty days from the date thereof; and by sec. 51,<sup>8</sup> (1846, ch. 271, sec. 1; 1847, ch. 305, sec. 1,) no bill of sale or mortgage of personalty shall be good except as between the parties, unless the vendee, &c. make affidavit that the consideration thereof is true and *bona fide* as therein set forth. Prior to this Act of 1729, ch. 8, as was observed in *Hambleton v. Hayward*, 4 H. & J. 443, the debtor might make secret conveyances and retain the possession, and that though suspicious was not of itself fraudulent.<sup>9</sup> Debtors then, as now, might sell and convey their property and deliver possession, and such sales if *bona fide* are valid. The Act was intended to give speedy notice to every one of every transfer of personalty where the grantor retains possession. Such possession of itself, unless the deed be acknowledged and recorded, defeats the conveyance as to creditors and subsequent purchasers. But the execution, acknowledgment and recording of the bill of sale give the party the same right he would have had if possession had accompanied the grant.<sup>10</sup> The Act therefore on the one hand intended, by these circumstances of notoriety, to take away the presumption of fraud arising from the continued possession of the grantor, and on the other hand assumed that a bill of sale made *bona fide*, and acknowledged and recorded, transferred the property absolutely to the grantee, though the grantor remained in possession, *Foster v. Beall*, 1 H. & J. 31. Enrolment being thus the substitute for delivery, the grantee in such a case is invested with the constructive possession, and may of course legally transfer the property. The grantor is held to be but the bailee of the grantee, holding the property at the latter's disposal. And a sale by him operates as an order to the grantor to deliver the property to the subsequent vendee, who, upon such an assignment, may maintain trespass or replevin for it, *Clary v. Frayer*, 8 G. & J. 398; and see *Newson v. Douglass*, 7 H. & J. 417. In *Hope v. Hutchins*, 9 G. & J. 77, where A., in consideration of natural love and affection, by such a bill of sale conveyed, amongst other chattels, a negro woman to B. and C., his wife, with a proviso that A. should not be debarred from using and enjoying the property and all its profits during life, and A. remained in possession during her life, it was held that the property passed at once to B., and that the proviso amounted only to a covenant for the use of the property by A. during life, and consequently the issue of the negro woman, born after the execution of the bill of sale, belonged to the donee, and could not be claimed by A.'s administrator. A *bona fide* bill of sale is thus good against subsequent purchasers, *Bohn v. Headley supra*, and against subsequent judgment creditors, or against

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<sup>8</sup> Amended by the Acts of 1902, ch. 26, and 1902, ch. 102, so as to require an affidavit by a mortgagee as to the payment of the mortgage tax. Code 1911, Art. 21, sec. 52.

As to fraudulent sales of stocks of goods in bulk, see Code 1911, Art. 83, secs. 19-21.

<sup>9</sup> But in *Price v. Pitzer*, 44 Md. 521, it is said that *Twyne's Case* established that the retention of the property by the debtor was an unmistakable badge of fraud, sufficient of itself to avoid the sale.

<sup>10</sup> *Cahoon v. Miers*, 67 Md. 573; *Kreuzer v. Cooney*, 45 Md. 582.