creditors who have not issued execution at the time of its making, for a debtor may honestly prefer one creditor to another.[11] Bruce v. Smith, 3 H. & J. 499, is a strong instance of this, and see Hambleton v. Hayward *supra;* Reeside v. Fisher, 2 H. & G. 320; Smith v. Edwards, 2 H. & G. 411. And it is good if the sale is not to be completed at once, as upon the default of the mortgagor; and the mortgagee's failure to take possession at the time of the forfeiture will not vitiate the deed, which in its inception was valid, Hudson v. Warner, 2 H. & G. 415.

Same subject—Notice—Bill of sale made out of State.—The act being intended to protect creditors from *secret* sales, a creditor having notice of an incumbrance, though unrecorded, is held not to be within the class of those for whose benefit it was passed. "We cannot," say the Court of
382 Appeals in *Hudson v. Warner *supra*, "give the Act the narrow construction that no notice was sufficient to gratify the law, but such as was derived from the registry of the deed. . . . . Any other kind of notice of the transfer, which demonstrates the existence of a lien or the transfer of a right, brought home to the party who seeks to avoid such lien or transfer, will be sufficient;" see Gill v. Griffith, 2 Md. Ch. Dec. 270.[12]

There are other instances in which the act does not apply. In Houston v. Newland, 7 G. & J. 480; Wilson v. Carson, 12 Md. 54; B. & O. R. R. Co. v. Glenn, 28 Md. 287, it was held to include only such instruments as are made within the limits of Maryland, for the recording is to be made in the County where the donor *resides*. The *situs* of personal property is the domicil of the owner, and as the Court observed in 12 Md. 77, it would be nearly impossible for a person residing in England to transfer personal property in Maryland, and record the transfer within twenty days, and absolutely so within the *County*, for the foreign owner would not *reside* in *any County* within the State.[13]

Same subject—Vendor not in possession.—Nor does the Act apply where the vendor does not remain in possession,[14] which is a question proper for the jury, Dorsey v. Gassaway, 2 H. & J. 402; Troxell v. Applegarth, 24 Md. 163, and consequently, though the bill of sale be recorded, it is not then evidence without proof of its execution; see Coale v. Harrington, 7 H. & J. 147. So where a sale was accompanied by delivery, it was held that the bill of sale, although in fact a deed of trust, did not require the oath of the vendee or to be recorded, Bryan v. Hawthorne, 1 Md. 523; Hudson v. Warner *supra;* and it would appear, that a deed of personalty in trust for the benefit of all the creditors of the grantor does not, except as against subsequent creditors and purchasers without notice, require to be recorded within the twenty days, nor an affidavit of consideration by the grantee, Hoopes v. Knell, 31 Md. 550.[15] Defects in the instrument itself, or in the mode of

---

[11] See note 35 *infra.*

[12] See note 16 *infra.*

[13] Changed by Act 1888, ch. 464. See note 7 *supra;* also Pleasanton v. Johnson, 91 Md. 673.

[14] Biemuller v. Schneider, 62 Md. 547.

[15] Mackintosh v. Corner, 33 Md. 598. Cf. Carson v. Phelps, 40 Md. 96; Snowden v. Pitcher, 45 Md. 260.