its execution, in the acknowledgment or affidavit of consideration, or in the recording of it, of which a number of instances will be found in the different digests, also render it invalid, and in all these cases, whether where the Act does not apply, or where the deed is defective, enrolment would not be constructive notice of its contents to a subsequent *bona fide* purchaser or incumbrancer. But it would seem from Cockey v. Milne's lessee, 16 Md. 200, and Denton v. Griffith, 17 Md. 301, that a defect in the affidavit of consideration avoids the bill of sale altogether, as to *bona fide* creditors, and that the question of notice in such a case is therefore immaterial, and a creditor may proceed directly at law against the property, just as under the Statute of Elizabeth for fraud in fact;[16] see, however, Philips v. Pearson, 27 Md. 242, as to parties not claiming as creditors or as purchasers with notice; and in Johnston v. Canby, 29 Md. 211, it was held that a subsequent incumbrancer of *land*, charged with actual notice of a prior mortgage so imperfectly executed, would be postponed to it.

Sale good between parties without compliance with act.—As between the parties and those claiming under them the sale is good without a compliance with the requisites of the Act, though possession is retained by the vendor, Gough v. Edelin, 5 Gill, 101; Hudson v. Warner *supra*,[17] or it is fraudulent in other respects as against creditors. This was expressly affirmed in Dorsey v. Smithson, 6 H. & J. 61, where the Court held that an unrecorded bill of sale of property, which remained in the donor's possession, might be void as against creditors if to their injury, but was binding on the donor and his representatives, and that an executor is estopped from saying it is void as to creditors, for the property is not assets, nor can he defend its possession in replevin on the score of fraud even though he be at the same time a creditor, and see Allein v. Sharp, 7 G. & J. 96. So in Newson v. Douglas *supra*, where A. made a bill of sale to B., which was

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[16] But the rule in equity, at least, is now otherwise. It is well settled that a promise to execute a mortgage of particular property, or a defectively executed or unrecorded mortgage, creates an equitable lien on the property enforceable in equity against the mortgagor, against his creditors who were such at the time the lien was created and against his assignee for creditors, but invalid as against subsequent creditors or *bona fide* purchasers for value and without notice. Textor v. Orr, 86 Md. 392; Brown v. Deford, 83 Md. 297; Ober v. Keating, 77 Md. 100. (As to real estate see note 19 to 27 Eliz., c. 4). The question of notice is always material in equity and it would seem at law as well. Pleasanton v. Johnson, 91 Md. 676.

Fersner v. Bradley, 87 Md. 488, is not in conflict, as the motion to dissolve the injunction in that case was submitted on bill, answer and exhibits, and the only evidence of the plaintiff's title, (denied by the answer), was a fatally defective bill of sale. Nor is Pleasanton v. Johnson, 91 Md. 673, in conflict, as that case was evidently one of subsequent creditors, and further the question was tried at law. On the other hand Marlow v. McCubbin, 40 Md. 132, affirms the earlier cases of Cockey v. Milne and Denton v. Griffith *supra* which are relied on for the statement in the text.

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