**383** fraudulent as to A.'s creditors, it was *determined that C. standing in the place of A.'s representatives could not bar B.'s right, however unclean the latter's hands may have been in the transaction. And in this connection may also be mentioned Dorsey v. Gassaway *supra,* where a mortgagor of personalty sold to A., and having made payments on account of the mortgage took the benefit of the insolvent laws, and then bought the property from the administrator of the mortgagee, and it was held that the absolute interest passed between the mortgagor thus claiming the whole and A., though as to the mortgagee only the equitable interest was transferred, and that the subsequent acts of the mortgagor in perfecting his own only went to affirm A.'s title, though the latter had not paid all the purchase money and had made a voluntary gift of the property to his son. The case is however authority, that the law will not appropriate payments by a debtor as between debts on mortgage and on open account in favour of a purchaser, who has not paid the purchase money and has made a gift of the property to defraud his creditors. It may be concluded, therefore, that no title will be affected under the act, unless at the instance of a party standing in the attitude of a creditor or purchaser without notice.

**Possession retained by vendor—Personalty and realty—Badges of fraud.**—Possession retained by the grantor is conclusive of fraud, where the bill of sale is not properly executed, acknowledged and recorded, and no evidence of *bona fides* in such case is admissible.[18] Where the deed, whether of realty or personalty, is not followed by a change of possession pursuant to the deed, this is a circumstance or badge of fraud, of greater or less influence dependent on the other attending circumstances.[19] It is, perhaps, therefore inaccurate to say, as it has been expressed in some of the cases, that the enrolment of the deed *rebuts* the presumption of fraud. It rebuts or displaces the *legal* presumption, but leaves the presumption or inference of fact. There are many cases where the continued possession by the grantor of realty will be considered an evident badge of fraud, see Watkins v. Stockett, 6 H. & J. 434; Stewart v. Iglehart, 7 G. & J. 133; Glenn v. Grover, 3 Md. 212; Duvall v. Waters, 1 Bl. 569; Waters v. Riggin, 19 Md. 536; Strike v. McDonald, 2 H. & G. 191; Hays v. Henry, 1 Md. Ch. Dec. 337.[20] But any other circumstances attending the transaction, as just

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[18] Not, however, as against existing creditors of the grantor, or subsequent creditors with notice. See note 16 *supra.*

[19] Mere possession by the mortgagor is not under our registry laws a badge of fraud. "To hold that a merchant cannot mortgage his goods without closing his doors, would be to hold that a chattel mortgage upon such property is worthless." First Bank v. Lindenstruth, 79 Md. 140.

[20] But not mere possession without proof that the grantor exercised rights inconsistent with those of the grantee. Such possession is not calculated to deceive others because parties look to the public records and not to the mere possession of the property itself. Fuller v. Brewster, 53 Md. 363; Hoffman v. Gosnell, 75 Md. 593; Crooks v. Brydon, 93 Md. 644; Crawford v. Neal, 144 U. S. 585. *Contra,* where the grantor is heavily indebted and remains in apparent control of the property and the rights of creditors are prejudiced by the conveyance. Thompson v. Williams, 100 Md. 200; Fladung v. Rose, 58 Md. 13.