

sequently to the enrolment. By sec. 20,<sup>10</sup> the possession of the grantee under a deed not recorded in time, shall, after it has been recorded, avail to all intents and purposes as if the deed had been recorded in time, saving the preference given by sec. 16<sup>11</sup> to the one of two deeds conveying the same property which is first recorded, provided it be *bona fide*, and upon good and valuable consideration. A general provision is also made for the recording of deeds after the time, under the direction of a Court of Equity, by Art. 16, sec. 23.<sup>12</sup>

It appears from the cases above mentioned, and there are others to the same effect in the books, that the constructive notice of a voluntary conveyance furnished by enrolment is, in the absence of fraud, sufficient to bind a subsequent purchaser. But it is also clear both upon the letter of the law and upon authority, that a conveyance, defective in one or more of the essential formalities of execution or acknowledgment, though it be recorded, is not constructive notice to a subsequent purchaser. It will be sufficient to refer on this point to *Price v. McDonald*, 1 Md. 403; *Johns v. Scott*, 5 Md. 581.<sup>13</sup>

And in the case of the defective acknowledgment of a deed by a *feme covert*, even actual notice does not bind a subsequent purchaser, unless where she deals with her separate estate; for she can convey her estate at law only in the manner prescribed by law; and if her conveyance is defective, she is to be treated as if she had never been a party to the deed, *Johns v. Reardon*, 11 Md. 365.<sup>14</sup>

It has, however, been settled by a number of cases, that actual notice to a subsequent purchaser is equivalent to registration.<sup>15</sup> It has been much doubted whether, in view of the general policy of the Registration Acts, Courts ought ever to have suffered the question of notice to be agitated against a party registering his conveyance, but it has been done on the principle that fraud cannot be allowed to prevail, *Wyatt v. Barwell*, 19 Ves., Jun. 445. Still, even actual notice does not avail against a party claiming a preference under sec. 16 of Art. 24,<sup>16</sup> above mentioned, unless given at the time or before the second deed was executed; for, if a right has vested when the notice is received, the purchaser under the junior conveyance is entitled to try his speed in attaining a priority of registry,

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<sup>10</sup> Code 1911, Art. 21, sec. 20.

<sup>11</sup> Code 1911, Art. 21, sec. 16.

<sup>12</sup> Code 1911, Art. 16, sec. 34.

<sup>13</sup> *Sitler v. McComas*, 66 Md. 135; *Dyson v. Simmons*, 48 Md. 218. *Contra*, as to a deed or mortgage not attested. *Carrico v. Farmers' Bank*, 33 Md. 235; *Brydon v. Campbell*, 40 Md. 331. Cf. *Sanders v. McDonald*, 63 Md. 503.

<sup>14</sup> *Grove v. Todd*, 41 Md. 633. This, of course, is no longer law. Code 1911, Art. 45, sec. 4.

<sup>15</sup> *Estate of Leiman*, 32 Md. 225; *Butler v. Rahm*, 46 Md. 541; *Valentine v. Seiss*, 79 Md. 187. Cf. *Pfeaff v. Jones*, 50 Md. 272.

<sup>16</sup> Code 1911, Art. 21, sec. 16.