

addition to the common law solemnities as a necessary constituent of a deed to secure the payment of money, as between the parties to it. Hence, a deed of this kind, as between the parties themselves, has always been deemed as valid and effectual without recording as with it. And as to creditors and purchasers, if they have, by any other means, obtained that notice, which it was the design of recording to give, even they are not allowed to object to the validity and operation of the deed on that account. But, in no instance, has any of the immediate parties to such a deed ever been suffered to object, that it should not be enforced; because it had not been recorded in time; such an objection can only come from a creditor, a purchaser, or some innocent third person whose interests are affected by the deed. Here there is no such third person before the Court; the objection is made by some of the parties to the mortgage itself; which cannot be permitted; since as to them the deed is valid by the common law; and in no way affected, as a security for money, by the Acts of Assembly requiring such instruments to be recorded. There is then, nothing in this position taken against the validity of the mortgage. 2 *Inst.* 774; *Northcott v. Underhill*, 1 *Ld. Raym.* 388; 8. C. 3 *Salk.* 199; *Bac. Abr. tit. Bargain and Sale, E. 1*; *Bushell v. Bushell*, 1 *Scho. & Lef.* 99; *Wood v. Owings*, 1 *Cran.* 240; *Hamilton v. Russell*, 1 *Cran.* 315; *Dorsey v. Smithson*, 6 *H. & J.* 61; *Hudson v. Warner*, 2 *H. & G.* 415.

It appears that Charles Salmon had agreed to lend his credit to Thomas Clagett, by selling him goods to be paid for at some future day; by lending him money; and by becoming his surety, in the way of lending or endorsing notes. Hence, in respect to that agreement, they stand towards each other simply as creditor and debtor. But, for the purpose of securing Salmon against any loss he might sustain by the credit so given; Thomas Clagett with Elizabeth Clagett and others mortgaged their property to Salmon; * and consequently, to the extent of Salmon's claim for indemnity under the mortgage, he must be regarded as the creditor; Thomas Clagett as the principal debtor; and Elizabeth Clagett with the other mortgagors as his sureties. This is the situation in which the parties have been placed by the mortgage itself; and this suit brings them here in the same relation towards each other. The dealings between Salmon and Thomas Clagett are no otherwise of any importance, in this case, than as shewing the consideration on which Salmon's claim is founded; and that it is of some amount; or how far any of Salmon's conduct, in relation to those dealings may have impaired that implied contract by virtue of which the sureties of Thomas Clagett have a right to have the impending loss averted from them by a bill *quia timet*; or to take the place of Salmon in order to obtain reimbursement.