

Affidavit as to consideration.

An affidavit held insufficient. It is essential that the affidavit should be endorsed on the mortgage and recorded with it. The fact that the oath was taken cannot be established otherwise. *Reiff v. Eshleman*, 52 Md. 587.

Whether the affidavit is made or not is immaterial as between the parties to the mortgage, and those claiming through or under the mortgagee; *contra* as to subsequent creditors and purchasers. *Hartsock v. Russell*, 52 Md. 627; *Cockey v. Milne*, 16 Md. 207.

Although the affidavit required by this section is wanting, or defective, if the lessee has actual notice of the mortgage, he takes the property subject thereto. *Russum v. Wanser*, 53 Md. 98; *Reiff v. Eshelman*, 52 Md. 588; *Johnson v. Canby*, 29 Md. 220; *Phillips v. Pearson*, 27 Md. 257.

Affidavit held to be *bona fide* and valid, notwithstanding the fact that a portion of mortgage debt was usurious interest. *Smith v. Myers*, 41 Md. 432.

Affidavit held to be in substantial compliance with this section, and made before a proper officer. *Stanhope v. Dodge*, 52 Md. 490.

A mortgage held void under this section as against the creditors of the mortgagor independent of the question of actual or intentional fraud; the assignee of the mortgage stands in no better position than the assignor. A deed held to be strictly and technically a mortgage within the meaning of this section and void as to all persons except the parties; nor can the mortgage be upheld as a mortgage of indemnity. Purpose of this section. The consideration mentioned in a deed if false could not be *bona fide*, nor if untrue could it be therein set forth in good faith. *Ressmyer v. Norwood*, 117 Md. 330.

Affidavit as to tax.

Where there is no interest provided for in the mortgage, the second oath need not be made. Interest, however, cannot be covered up as principal. *Salabes v. Castelburg*, 98 Md. 655.

Although a mortgage is first recorded without the tax affidavit, it is good as between the parties. See notes to art. 66, sec. 11. *Tolson v. Williams*, 136 Md. 613, 615.

Generally.

A deed held to be a mortgage within the meaning of this section. The sections relative to execution and recording, refer to a technical mortgage and not to deeds of trust. *Stanhope v. Dodge*, 52 Md. 490; *Shidy v. Cutter*, 54 Md. 677. And see *Snowden v. Pitcher*, 45 Md. 265; *Carson v. Phelps*, 40 Md. 96; *Stockett v. Holliday*, 9 Md. 499; *Charles v. Clagett*, 3 Md. 82.

This section, and sec. 32, and art. 16, sec. 35, are for the protection of creditors becoming such after the date of mortgages either unrecorded or defectively executed. The trustee in bankruptcy of a mortgagor may have the title to property covered by a defectively executed or recorded mortgage declared to be in him *Davis v. Harlow*, 130 Md. 166.

Where the mortgage has been duly sworn to and recorded, it has the same effect as if the mortgagee had been put in possession of the mortgaged property. *Cahoon v. Miers*, 67 Md. 579.

Purpose of this section—substantial compliance sufficient. *Marlow v. McCubbin*, 40 Md. 136; *Nelson v. Hagerstown Bank*, 27 Md. 73; *Phillips v. Pearson*, 27 Md. 256; *Cockey v. Milne*, 16 Md. 207. *Cf.* *Denton v. Griffith*, 17 Md. 304.

As against creditors and purchasers, or assignees of the mortgagor seeking to redeem, the English doctrine of tacking or consolidation is inconsistent with this section. *Brown v. Stewart*, 56 Md. 431.

Cited but not construed in *Brown v. Freestone, etc., Co.*, 55 Md. 551; *Van Riswick v. Goodhue*, 50 Md. 61.

See secs. 34 and 53 and notes.

See art. 81, sec. 201.

An. Code, sec. 33. 1904, sec. 31. 1888, sec. 31. 1856, ch. 113.

34. The affidavit required by the preceding section may be made by one of several mortgagees, and shall have the same effect as if made by all; or the said affidavit may be made by any agent of a mortgagee; and when