

An. Code, 1924, sec. 24. 1912, sec. 24. 1904, sec. 24. 1888, sec. 24. 1880, ch. 172, sec. 25. 1896, ch. 446.

26. If any deed, conveyance, assignment, gift, transfer or delivery be made of any goods, chattels, money, choses in action, lands, tenements or other property, or lien created thereon when the grantor or person creating the same is insolvent or in contemplation of insolvency, the same shall be *prima facie* intended to hinder, delay and defraud the creditors of the person by whom the same is made, and the burden of proof shall rest upon him and the grantee to explain the same and show *bona fides* thereof; provided the creditors of the grantor in such deeds, conveyances or assignments shall avail themselves of the provisions of this article.

This section prescribes a new rule of evidence which is applicable as well to deeds, conveyances, gifts and transfers relied on to have a debtor adjudged insolvent, as to same instruments and acts when attacked by insolvent trustee. The rule is applicable alike in insolvent court and in court of law and equity. *Vogler v. Rosenthal*, 85 Md. 46.

This section was aimed at conveyances which stripped an insolvent of any part of his property, at same time placing it beyond reach of creditors, and hence has no application to a deed of trust for benefit of creditors made *bona fide* and giving no preferences. *Pfaff v. Prag*, 79 Md. 370. (See sec. 36).

This section applied. *Smith v. Pattison*, 84 Md. 344.

Prior to the adoption of this section the law was to the contrary. *Syester v. Brewer*, 27 Md. 316; *Maennel v. Murdock*, 13 Md. 178.

Cited but not construed in *Applegarth v. Wagner*, 86 Md. 474; *Brown v. Smart*, 69 Md. 332 (affirmed in 145 U. S. 454).

An. Code, 1924, sec. 25. 1912, sec. 25. 1904, sec. 25. 1888, sec. 25. 1880, ch. 172, sec. 26. 1888, ch. 275. 1892, ch. 658.

27. If any real estate, chattel, real or personal property of the insolvent shall have been decreed to be sold by virtue of any decree of any court of equity for the enforcement of a mortgage, or if there be a power of sale, or a consent to a decree for a sale contained in any mortgage, or bill of sale of real estate, chattels, real or personal property of the insolvent, as the case may be, the filing of the petition in insolvency, either by or against the insolvent, as hereinbefore provided, and the subsequent proceedings in insolvency on such petition shall not disturb, defeat or impair the right of the mortgagee to apply for a decree, or of the trustee named in the decree, or the mortgagee, or bargainee, or his assignee, or person authorized in the mortgage or bill of sale to make sale to proceed with such sale, or to execute the power of sale contained in said decree, mortgage, or bill of sale, unless the right, or power or consent to decree shall be waived in writing by the mortgagee or his proper representatives, and in all such cases, in the absence of waive of right by the mortgagee or his proper representatives, as hereinbefore provided, the trustee in insolvency shall only be authorized to sell the equity of redemption of the insolvent in all such property by decree, mortgage or bill of sale as aforesaid.

This section is not retrospective, and has no application to proceedings commenced before it was passed. *Gable v. Scott*, 56 Md. 182; *Mackubin v. Boardman*, 54 Md. 384.

Prior to the adoption of this section a non-resident mortgagee was held to have a right of sale paramount to that of the insolvent trustee. *Ensor v. Lewis*, 54 Md. 397.

Prior to the adoption of this section, the law (subject to certain conditions), was to contrary. *Ensor v. Keech*, 64 Md. 381; *Mackubin v. Boardman*, 54 Md. 384; *Zeigler v. King*, 9 Md. 332; *Bank of Westminster v. Whyte*, 3 Md. Ch. 512; *Alexander v. Ghiselin*, 5 Gill, 178. See also *Gable v. Scott*, 56 Md. 184.

Cited but not construed in *Crocker v. Hopps*, 78 Md. 265 (involving a chattel mortgage); *Bushman v. Hanna*, 72 Md. 4.

An. Code, 1924, sec. 26. 1912, sec. 26. 1904, sec. 26. 1888, sec. 26. 1880, ch. 172, sec. 27.

28. It shall be the duty of the several clerks of the courts of this State, wherein any proceedings in insolvency may be pending under any of the