

this section to apply to every assignee, whether he claims by direct assignment from the mortgagee or his executor, or under a series of assignments.

This section referred to in dissenting opinion; equitable title to mortgage debt. *Baltimore v. Harper*, 148 Md. 241.

An. Code, 1924, sec. 43. 1912, sec. 42. 1904, sec. 40. 1890, ch. 14. 1890, ch. 373, sec. 39A. 1924, ch. 415.

44. Whenever any assignment or release of a mortgage, or any release or assignment of an interest in any deed of trust is made by a separate deed, or in any other mode than that prescribed in Sections 36, 38, 39 and 40 of this article, and whenever any proceedings to foreclose a mortgage is had, or a sale under any deed of trust is made, it shall be the duty of the clerks of the Circuit Courts of the Counties and the Clerk of the Superior Court of Baltimore to enter in the margin of the record of the original paper a memorandum of the place where such deed of assignment or release, or proceeding of foreclosure, or report of sale, as the case may be, is recorded; and the clerk making such entry shall charge therefor the sum of twenty-five cents, to be taxed as part of the fee for recording such assignment or release, or as part of the costs of the case where there has been a foreclosure of mortgage or sale under a deed of trust.

See notes to sec. 43.

Bills of Sale.

An. Code, 1924, sec. 44. 1912, sec. 43. 1904, sec. 41. 1888, sec. 40. 1729, ch. 8, secs. 5, 6. 1856, ch. 154, sec. 123.

45. No personal property, of any description whatever, whereof the vendor, mortgagor or donor shall remain in possession, shall pass, alter or change, or any property therein be transferred to any purchaser, mortgagee or donee, unless by bill of sale or mortgage acknowledged and recorded as herein provided; but nothing herein shall be construed to extend to any sale or gift, where the same is accompanied by delivery, nor to invalidate such transfer as between the parties thereto.

Creditors and purchasers. Parties.

An agreement held to be ineffectual as a bill of sale or chattel mortgage as against third parties, because this section was not complied with. In such case, an equitable lien is created. Effect thereof. Distribution of fund. *Textor v. Orr*, 86 Md. 397. *Cf. Alexander v. Ghiselin*, 5 Gill, 180.

A mortgagee will not be permitted to withhold a mortgage from record, and then, by taking a renewal and recording it, prejudice the rights of those who have trusted the mortgagor on the strength of his possession of the property mortgaged. When mortgages will be regarded as renewals. *Gill v. Griffith*, 2 Md. Ch. 282. And see *In re Noel*, 137 Fed. 694. *Cf. Alexander v. Ghiselin*, 5 Gill, 180.

A defectively executed and unrecorded mortgage is invalid as against a second mortgage duly recorded. *Ober & Sons Co. v. Keating*, 77 Md. 103.

If a creditor has notice of an unrecorded bill of sale or mortgage, he is bound by it. *Hudson v. Warner*, 2 H. & G. 430. (And see notes to sec. 14.)

This section has no application unless the mortgagor remains in possession of the property, and even then, a compliance with it is not essential as between the parties. Rights of subsequent purchaser. *Biemiller v. Schneider*, 62 Md. 559.

A defectively executed and unrecorded bill of sale or mortgage is effectual as against the vendor and all claiming under him. *Gough v. Edelin*, 5 Gill, 103; *Clagett v. Salmon*, 5 G. & J. 346; *Dorsey v. Smithson*, 6 H. & J. 63. See also *Ing v. Brown*, 3 Md. Ch. 521.

This section is intended for the protection of purchasers, lienors and subsequent creditors without notice. A bankrupt trustee may assert the invalidity of an unrecorded contract reserving title to certain supplies sold, as regards creditors without notice. *Roberts & Co. v. Robinson*, 141 Md. 49.

While this section does not apply to conditional sales where the vendors part with possession, it does apply when *bona fide* purchasers for value are concerned. The words "is accompanied by delivery" mean not a *constructive* but an *actual* delivery, so far as *bona fide* purchasers are concerned. See notes to art. 83, sec. 22. *Stem v. Crawford*, 133 Md. 589.