

appear from the deed, that an assignment of personalty was intended to operate as a continuing security, and to apply to property subsequently acquired and substituted for the subjects assigned in the first instance, it will be so applied, if the words used are capable of such a construction, of which Carr v. Allatt, Allatt v. Carr, 27 L. J. Exch. 385, is an example. In Holroyd v. Marshall, 10 H. L. Cas. 191, A. assigned to B., by deed, all the machinery in a certain mill, upon trust to secure a sum of money, and it was provided that all the machinery, which should be fixed or placed in the mill, in addition to or in substitution for the original machinery, during the continuance of the security, should be subject to the trusts of the assignment, and A. undertook to do all that was necessary to vest in B. the additional and substituted machinery. The deed was registered as a bill of sale, and A., after its date, placed other machinery in the mill in addition to what was there originally, giving notice to B. of each substitution and addition; and A. continued in possession. Vice-Chancellor Stuart held that the machinery was in A.'s possession, as agent of B., and B. was entitled to the added and substituted machinery against a judgment creditor of A., who had gotten out execution against him; but Lord Campbell, then Lord Chancellor, reversed this decision on the grounds, that the possession of A. was not enough to support B.'s claim, and that to give B. a complete title to the added and substituted machinery, a *novus actus interveniens*, according to Lord Bacon's maxim, was required. The case was carried to the House of Lords, and there Lord Campbell's judgment was reversed. The judgment of Lord Westbury proceeded on very familiar and satisfactory grounds. He observed that, in equity, it is not necessary to the alienation of property that there should be a formal deed of conveyance. A contract, for a valuable consideration, by which it is agreed to make a transfer of property, passes the \*beneficial interest, and **391** this is true not only of contracts relating to land, but of contracts relating to goods, if such as equity would specifically perform. A contract for a

---

mortgage. Such lien, however, only attaches from the time of the acquisition of the property by the mortgagor and is subject to all pre-existing liens thereon. Wilson v. Wilson, 37 Md. 1; Butler v. Rahm, 46 Md. 548; Brady v. Johnson, 75 Md. 451; Crocker v. Hopps, 78 Md. 260; First Bank v. Lindenstruth, 79 Md. 140; Diggs v. Fidelity Co., 112 Md. 72. Cf. Cahoon v. Miers, 67 Md. 576. The doctrine applies to real estate as well as personal property. Brady v. Johnson, *supra*.

Where with the knowledge of the mortgagee and for his benefit such after acquired property has been so mingled with the property embraced in the mortgage as not to be distinguished from the latter, a judgment creditor of the mortgagor may levy upon the whole of it. First Bank v. Lindenstruth, 79 Md. 141. Cf. Wilson v. Wilson, 37 Md. 1; Edelhoff v. Horner Co., 86 Md. 610. Distinguish Kreuzer v. Cooney, 45 Md. 582. But an unfinished carriage conveyed by a bill of sale and allowed to remain in the possession of the vendor by whom it was afterwards completed cannot be sold under execution against the vendor on the ground that part of the material used in finishing the carriage belonged to the vendor. Paine v. Young, 56 Md. 314.