

Registration after six months.—Mortgages (as well as other deeds) that have not been recorded, if the omission were without any fraudulent intent, may be decreed to be registered by a Court of equity under Art. 16, sec. 23,¹⁹ of the Code, which, however, saves the rights of subsequent pur-

¹⁹ Code 1911, Art. 16, sec. 34.

Effect of failure to record a deed or mortgage within six months.—There are two distinct modes of recording a deed after the expiration of six months from its date. The first is by order of a court of equity under Art. 16, sec. 34, *supra*, applicable to mortgages as well as deeds; the second is by mere act of the grantee under Code 1911, Art. 21, sec. 19, applicable only to deeds proper. Both of these sections refer only to deeds executed and acknowledged according to law and perfect in all respects so far as depends upon the act of the grantor or mortgagor. *Pfeaff v. Jones*, 50 Md. 263; *Glenn v. Davis*, 35 Md. 215. The mere clerical act of recording a mortgage after six months from its date without an order of court is null and void, though when the question of the priority of such a mortgage is raised in a court of equity, it will be determined as if an application to record had then been made and granted. *Pfeaff v. Jones*, 50 Md. 272; *Harding v. Allen*, 70 Md. 395.

Construction of Code provisions.—The construction of each of these sections is practically the same:—that is to say, the effect of recording a *deed or mortgage* after six months from its date under order of court is the same as the effect of recording a *deed* after said period by mere act of the grantee. *Stanhope v. Dodge*, 52 Md. 491. And an instrument which is defectively executed or acknowledged, the recording of which is abortive by reason of such defect, is treated as being on the same plane as an instrument which is not recorded within the prescribed period. *Dyson v. Simmons*, 48 Md. 218.

Now it is well settled that if a party makes a mortgage, or other conveyance, or affects to make one, but it proves to be defective by reason of some informality or omission, such as failure to record in due time, defective acknowledgment or the like, though even by the omission of the mortgagee or grantee himself, since the instrument is at least evidence of an intention to convey, the conscience of the mortgagor or grantor is bound and it will be enforced by a court of equity even against subsequent judgment creditors. *Dyson v. Simmons*, 48 Md. 214; *Valentine v. Seiss*, 79 Md. 190 and cases *infra*. The same is also the rule with regard to personal property. See note 16 to 13 Eliz., c. 5.

Our law, however, requires recording within six months, and while the above sections allow recording to be done after that time, they save the rights of creditors of the grantor who become so after the date of the instrument and before its record and without notice of it. The result therefore is that the property conveyed remains liable to all of the debts of the grantor contracted after the date of the conveyance and before its record and without notice of it. The conveyance is good as to creditors of the grantor who became such before its date even though judgments are obtained by such creditors before its record; but it has no priority as to the