

lands lie, or in which the grantors resided, as required by the acts of 1715, ch. 47, and 1766, ch. 14, or in any other of the modes prescribed by law.

It is not disputed that the mortgage to Johns is invalid as a legal conveyance, but it is insisted that, *inter partes*, it is a good equitable lien; and that having been recorded in the county in which the lands lie, Scott, the second mortgagee, is affected with constructive notice, and that his mortgage must be postponed to the prior equitable lien of Johns.

It may be that as between the parties themselves, or, at least, as far as Reardon is concerned, the mortgage to Johns, though void at law as a conveyance, may be good in equity as a contract; and that a court of chancery, in a controversy in which their rights alone are concerned, would give it efficacy as a contract. That may very well be, and yet in this case, in which the rights of a subsequent incumbrancer are involved, a very different determination may be arrived at. There is no pretence here that Scott, the second mortgagee, when he loaned the money, or took the security from Reardon and wife, had notice in fact, or any the slightest reason to suspect the existence of the prior instrument. If, therefore, he is to be affected by it, it is upon the doctrine of constructive notice, founded upon the registration of the first conveyance and the policy of the registry act.

This policy has nothing to do with the question of fraud. The operation of the registry acts may bind the title, but do not affect the conscience of the party taking the subsequent conveyance, whilst in cases which are not within those acts the subsequent purchaser is only affected by such actual notice as would amount to fraud. 1 *Story's Eq.*, Secs. 401 & 403; *Dey vs. Dunham*, 2 *Johns. Ch. Rep.*, 190, 191.

The doctrine is too firmly established to be doubted that subsequent purchasers are not affected by constructive notice of prior registered deeds and conveyances, unless they are such as are required by law to be registered. It has never been understood to extend to all deeds which may be, *de facto*, registered, but to such only as are authorized and required by