

in case of more than one mortgage, the one first recorded shall have preference.

An unrecorded mortgage is good between the parties, and a pre-existing indebtedness is a sufficient consideration. *Textor v. Orr*, 86 Md. 398.

See notes to sections 16 and 43.

1904, art. 21, sec. 49. 1888, art. 21, sec. 48. 1860, art. 24, sec. 50. 1856, ch. 154, sec. 141. 1896, ch. 120. 1898, ch. 49. 1898, ch. 275. 1898, ch. 501. 1900, ch. 81. 1902, ch. 26. 1902, ch. 102.

51. Mortgages of personal property may be assigned and released in the same manner as mortgages of real property, according to the rules hereinbefore prescribed for the assignment and release of the same.

See sec. 34, *et seq.*

Ibid. sec. 50. 1888, art. 21, sec. 49. 1860, art. 24, sec. 51. 1846, ch. 271. 1847, ch. 305, sec. 1. 1902, ch. 26. 1902, ch. 102.

52. No bill of sale or mortgage of personal property shall be valid, except as between the parties, unless the bargainee or vendee or mortgagee, or some one of them, or the agent of some one of them, shall make an affidavit that the consideration in said bill of sale or mortgage is true and *bona fide* as therein set forth, and no mortgage of personal property executed since March 27, 1902, shall be valid, except as between the parties thereto, unless in addition to the above prescribed affidavit, the mortgagee, or some one of them, or the agent of some one of them shall make the further oath or affirmation prescribed by section 32, and such affidavit may be made at any time before recording, and before any person authorized to take the acknowledgment of such bill of sale or mortgage.

Application of this section.

This section is applicable where the mortgagor and mortgagee are non-residents, the property being located in this State. Such a mortgage without an affidavit is invalid as against attaching creditors. *Pleasanton v. Johnson*, 91 Md. 676.

This section has no application to a voluntary deed for the benefit of creditors. Conveyances contemplated by this section. *Hoopes v. Knell*, 31 Md. 554; *Mackintosh v. Corner*, 33 Md. 606.

The acts of 1846, ch. 271, and 1847, ch. 305, only apply to such bills of sale as are required to be acknowledged and recorded; hence if the property passes to the vendee, no affidavit is required—see notes to section 43. *Bryan v. Hawthorne*, 1 Md. 524; *Waters v. Dashiell*, 1 Md. 474.

Generally.

A mortgage without the formalities prescribed by section 43 and this section is subordinate to a second mortgage duly executed, acknowledged and recorded. *Butler v. Gannon*, 53 Md. 341.

The affidavit may be made at any time before recording, and before any person authorized to take the acknowledgment of the bill of sale or mortgage. *Fersner v. Bradley*, 87 Md. 492.

Though a bill of sale be defective in not having the affidavit, it may be set up as a valid contract in equity. *Ing v. Brown*, 3 Md. Ch. 525; *Alexander v. Ghiselin*, 5 Gill, 138.

Purpose of this section; a substantial compliance is sufficient. *Marlow v. McCubbin*, 40 Md. 136. And see *Mackintosh v. Corner*, 33 Md. 606. *Cf. Denton v. Griffith*, 17 Md. 304.

For cases now apparently inapplicable to this section by reason of changes in the law, see *Fouke v. Fleming*, 13 Md. 412; *Wilson v. Carson*, 12 Md. 54.

See sec. 32 and notes.