1715. himself. Under such circumstances, a bill would certainly be supportable in chancery against the now defendant. Courts in this state adopt the rules of equity, which form a part of our law. We are not necessarily called upon to say in the present instance, how far we should feel ourselves obliged to follow the practice of a Court of Chancery, to prevent injustice, if even a plea in abatement had been put in to the form of the assignment. *David Chalfont*, assignee of *Frances Goodwin*, one of the executors of *Mary Goodwin* v. *Caleb Johnson*, surviving executor of *Robert Johnson*. *Circuit Court, Chester county*, May, 1800, MSS. Reports.

The assignor of a bond is a competent witness to prove that it was fraudulently obtained by him, or that it was given to raise money for the obligor, and that he used it to pay his own debt. Fraud, either in the execution, or the consideration of a bond, may be given in evidence under the plea of payment. 2 Binney, 154.

CHAPTER CCVIII.

An ACT *for acknowledging and recording of deeds.*

Offices for recording of deeds established.

BE it enacted, That there shall be an office of record in each county of this province, which shall be called and styled, The Office for recording of Deeds; and shall be kept in some convenient place in the said respective counties, and the recorder shall duly attend the service of the same, and, at his own proper costs and charges, shall provide parchment, or good large books, of royal or other large paper, well bound and covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances, which shall be brought to him for that purpose, according to the true intent and meaning of this act.

Deeds before recorded, to be acknowledged, &c.

II. *And be it further enacted*, That all bargains and sales, deeds and conveyances of lands, tenements and hereditaments, in this province, may be recorded in the said office; but before the same shall be so recorded, the parties concerned shall procure the grantor or bargainer named in every such deed, or else two or more of the witnesses (who were present at the execution thereof,) to come before one of the Justices of the Peace of the proper county or city where the lands lie, who is hereby empowered to take such acknowledgment of the grantor, if one, or of one of the grantors, if more.

or proved.

III. But in case the grantor be dead, or cannot appear, then the witnesses brought before such justice shall by him be examined upon oath or affirmation, to prove the execution of the deed then produced: Whereupon the same justice shall, under his hand and seal, certify such acknowledgment or proof upon the back of the deed, with the day and year when the same was made and by whom: And that after the recorder has recorded any of the said deeds, he shall certify on the back thereof, under his hand and seal of his office, the day he entered it, and the name or number of the book or roll, and page, where the same is entered.

The acknowledgment or proof to be certified.

Deeds made out of this province, how to be proved.

IV. *And be it further enacted*, That all deeds and conveyances made and granted out of this province, and brought hither and recorded in the county where the lands lie (the execution whereof being first proved by the oath or solemn affirmation of one or more of the witnesses thereunto, before one or more of the justices of the peace of this province, or before any mayor or chief magistrate or officer, of the cities, towns or places, where such deeds or conveyances are or shall be made or executed, and accordingly certified under the common or public seal of the cities, towns or places, where such deeds or conveyances are so proved respectively) shall

be as valid, as if the same had been made, acknowledged or proved, in the proper county where the lands lie in this province. 1715.

The force and effect of deeds acknowledged and recorded.

V. *And be it further enacted*, That all deeds and conveyances made or to be made, and proved or acknowledged, and recorded as aforesaid, which shall appear so to be, by indorsement made thereon, according to the true intent and meaning of this act, shall be of the same force and effect here, for the giving possession and seisin, and making good the title and assurance of the said lands, tenements and hereditaments, as deeds of feoffment, with livery and seisin, or deeds enrolled in any of the king's courts of record at Westminster, are or shall be in the kingdom of Great Britain. And the copies or exemplifications of all deeds so enrolled, being examined by the recorder, and certified under the seal of the proper office (which the recorder, or keeper thereof, is hereby required to affix thereto) shall be allowed in all courts where produced, and are hereby declared and enacted to be, as good evidence, and as valid and effectual in law, as the original deeds themselves, or as bargains and sales enrolled in the said courts at Westminster, and copies thereof, can be; and that the same may be shewed, pleaded and made use of accordingly.

Certified copies to be evidence.

The force and effect of the words grant, bargain, sell, &c.

VI. *And be it further enacted*, That all deeds to be recorded in pursuance of this act, whereby any estate of inheritance in fee-simple shall hereafter be limited to the grantee and his heirs, the words grant, bargain, sell, shall be adjudged an express covenant to the grantee, his heirs and assigns, *to wit:* That the grantor was seized of an indefeasible estate in fee simple, freed from incumbrances done or suffered from the grantor (excepting the rents and services due to the lord of the fee) as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed, and that the grantee, his heirs, executors, administrators and assigns, may in any action, assign breaches, as if such covenants were expressly inserted. *Provided always*, That this act shall not extend to leases at rack-rent, or to leases not exceeding one-and-twenty years, where the actual possession goes with the lease.

The penalty against forgery and perjury, [ante. page 4.].

VII. *And be it further enacted*, That if any person shall forge any entry of the said acknowledgments, certificates or indorsements, whereby the freehold or inheritance of any man may be charged, he shall be liable to the penalties against forgers of false deeds, &c. And if any person shall perjure himself in any of the cases herein abovementioned, he shall incur the like penalties, as if the oath or affirmation had been in any court of record.

No mortgage good, unless acknowledged and recorded in six months.

VIII. *And be it further enacted*, That no deed or mortgage, or defeasible deed, in the nature of mortgages, hereafter to be made, shall be good or sufficient to convey or pass any freehold or inheritance, or to grant any estate therein for life or years, unless such deed be acknowledged or proved, and recorded, within six months after the date thereof, where such lands lie, as herein before directed for other deeds.

Mortgagee having received his money, shall

IX. *And be it further enacted*, That any mortgagee of any real or personal estates in this province, having received full satisfaction and payment of all such sum and sums of money as are really

1715. due to him by such mortgage, shall, at the request of the mortgager, enter satisfaction upon the margin of the record of such mortgage recorded in the said office, which shall for ever thereafter discharge, defeat and release the same; and shall likewise bar all actions brought, or to be brought thereupon.

enter satisfaction. [Manner of compelling it, and the penalty for not doing it. See the act of 13th April, 1791, (post. chap. 1564, sect. 14,) with respect to judgments generally.]

X. And if such mortgagee, by himself or his attorney, shall not, within three months after request and tender made for his reasonable charges, repair to the said office, and there make such acknowledgment as aforesaid, he, she or they, neglecting so to do, shall for every such offence, forfeit and pay, unto the party or parties aggrieved, any sum not exceeding the mortgage-money, to be recovered in any Court of Record within this province, by bill, plaint or information.

Passed May 28th, 1715.—Recorded A. vol. II. page 102. (o)

(o) By a supplement, (chap. 704,) deeds affecting real estate are directed to be acknowledged or proved before a Judge of the Supreme Court, or one of the Justices of the Common Pleas of the county where the lands lie, and recorded within six months, if executed here, and within twelve months, if executed abroad, from the execution of such deeds; otherwise the same shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless they are recorded, before the deed of the purchaser or mortgagee is proved and recorded; but the provision does not extend to leases not exceeding twenty-one years, where actual possession has gone with the deeds. The supplement further provides, that where grantors and witnesses are deceased, or cannot be had, any Justice of the Supreme Court, or any Justice of the Common Pleas of the proper county, may take proof of the hand-writing of the witnesses, or (if that cannot be had,) proof of the hand-writing of the grantors, which being certified by the Justice, the deed shall be recorded as is usual in other cases. Regulations are, likewise, introduced respecting the mode and priority of recording deeds; and the fees and sureties of the several Recorders. By an act of the 24th of February, 1770, (post. chap. 605,) provision is made to effectuate conveyances by femes coverts. By the old constitution, (sect. 34,) it was ordained, that an office for recording of deeds should be kept in each city and county; which provision is adopted by the existing constitution, (art. 5, s. 11,) with an additional clause upon the subject, (art. 6, s. 3,) that the offices of the Recorders shall be kept in the county town of the respective counties, unless the Governor shall, for special reasons, dispense therewith, for any term not exceeding five years after the county shall have been erected. By an act of the 14th of March, 1777, (chap. 737,) Recorders, &c. were appointed in the several counties; their respective official sureties were regulated; their powers, duties, and perquisites, under the preceding laws, confirmed; and provision was made for surrendering the records to their successors. By an act of the 31st of August, 1778, (chap. 793,) provision is made for giving validity to the acknowledgment and probate of deeds had and taken before any of the members of the Council of Safety, (while that Council was subsisting,) or any of the enumerated Justices of the Peace appointed by the Convention, until Justices of the Court of Common Pleas were appointed; or any member of the Supreme Executive Council, at any time before the passing of the act; provided such deeds were recorded in the proper office within nine months. By an act of the 23d of September, 1783, (chap. 1029,) it was provided, that all mortgages, executed between the 1st of January, 1776, and the 18th of June, 1778, which had been at any time since recorded, or which should be recorded within six months, should be as valid, as if recorded within six months after the execution; except against subsequent judgments, statutes, recognizances, attainders, forfeitures or liens whatsoever, or against *bona fide* purchasers and mortgagees. By an act of the 8th of April, 1785, (chap. 1152,) it is enacted, that all acknowledgments and probates of deeds made before the President of the Court of Common Pleas for the county of Philadelphia, or of any other county, shall be as available as if made before one of the Judges of the Supreme Court. By an act of the 13th of April, 1791, (chap. 1564, sect. 10,) it is enacted, that all acknowledgments and probates of deeds made before any one of the associate Judges of the Courts of Common Pleas shall be as available, as if made before a Judge of the Supreme Court, or a President of the Common Pleas. By an act of the 30th of September, 1791, (chap. 1590, sect. 9,) it is enacted, that the Mayor and

Recorder of the city of Philadelphia, the Master of the Rolls, and the Justices of the Peace, shall have power to receive the proof or acknowledgment of all instruments of writing, in the same manner as Justices of the Peace might or could have done under the act in the text; or as Justices of the Common Pleas might do under the act of the 18th of March, 1775, (chap. 704,) or as might be done under the act of the 24th of February, 1770, (post. chap. 605,) for the better confirmation of the estates of persons holding or claiming under femes covert. By the act of the 13th of April, 1791, (chap. 1564, sect. 11,) it is provided, that Sheriff's deeds for lands sold, under writs of execution from the Supreme Court, may be acknowledged before one of the Justices at Nisi Prius, in the county where the lands lie; and if the sale is under a testatum, the acknowledgment may be in the Common Pleas of the proper county. See likewise, acts empowering the Justices of the Supreme Court and of the Common Pleas to supply defects in titles to lands by lost or defaced deeds, (chap. 1210, chap. 1640;) providing for the safe-keeping of the records in the several counties, (chap. 1484:) regulating the fees of the Master of the Rolls and Recorders of Deeds, and punishing extortion, (chap. 1852;) and raising a revenue of fifty cents upon every patent recorded by the Master of the Rolls, over and above one thousand patents in each year. (chap. 1854.) (*Note to former edition.*)

By an act passed February 7th, 1803, the Aldermen of the city of Philadelphia are empowered to take the acknowledgment of deeds, and also the separate examination of *femes covert*, for lands, &c. within the *city* of *Philadelphia*, and to receive therefor, the same fees as Justices of the Peace receive, (post. chap. 2309.) And by an act passed January 20th, 1806, (post. chap. 2619,) the Aldermen are empowered to take similar acknowledgments of deeds, &c. for lands, &c. within the *county* of *Philadelphia*.

And by an act passed March 28th, 1803, (post. chap. 2355,) recognizances and bonds, taken from Sheriffs and their sureties, shall be taken and duly recorded by the Recorder of deeds of the proper county; and when indorsed by him as duly recorded, shall forthwith be transmitted to the Secretary of the Commonwealth, who shall file the same in his office; copies whereof, under the hand and seal of office of the said Secretary or Recorder, shall be legal evidence in any suit or suits brought thereon, &c.

The references in the note to the former edition, respecting the acknowledgment of Sheriff's deeds before the Judges at Nisi Prius, it will be observed, are no longer useful, since the abolition of that Court, in any part of the State, except the city and county of Philadelphia. See the note to chap. 152, ante. pa. 61. 1715.

So, with respect to the Master of the Rolls, whose office was abolished by an act passed March 29th, 1809.

The following notes are from the former edition:

A deed executed by two persons with one ink, and one wax seal, attested by one witness only, and merely proved by him before a Justice, without being recorded, was allowed to be read in evidence. The supplement, (post. chap. 704,) certainly allows the proof of one witness to be sufficient. 1 Dallas, 63.

A deed proved by the affidavit of one of the witnesses before a Justice of the Common Pleas, but not recorded, was read in evidence. The recording does not contribute to the proof of the deed, which is established by the oath before the Justice; the recording only gives the deed a special operation by the express provisions of the act. 1 Dallas, 93.

A deed executed in *England* and recorded here, and a deed executed in *England*, and acknowledged here, though not recorded, were both read in evidence. 1 Dallas, 66.

It was adjudged in the Circuit Court of the United States, for the *Pennsylvania district*, that the six months allowed for recording mortgages, were Kalendar months. 2 Dallas, 302.

A mortgage, though not recorded within six months, is good against the mortgagor. 1 Dallas, 434.

A mortgage, acknowledged and recorded the day after the declaration of independence, by officers appointed under the Proprietary Government, was nevertheless held to be valid against a subsequent judgment creditor, and *bona fide* purchaser, for a valuable consideration. 1 Dallas, 48.

The acknowledgment of a Sheriff's deed in Court, and registering it in the Prothonotary's office, is a sufficient recording within the act. 1 Dallas, 68.

For the proceedings to recover on a mortgage, see chap. 152, ante. pa. 60.

Since the former notes, the following cases have been decided:

Stroud, assignee, v. *Lockart* & al.

Scire facias on a mortgage. The mortgage had not been recorded conformably to the act of Assembly; and *Lockhart* had purchased the premises. But on the trial, the plaintiff proved, that *Lockhart* knew of the existence of the mortgage at the time of his purchase, and said he would have to pay it, although it was not then recorded.

By the Court. The case is too plain for controversy. The plaintiff must have a verdict; and all the trouble of the jury will be to calculate interest.

Verdict for plaintiff. 4 Dallas, 175.

1715. In *Pennsylvania*, any one by having recourse to the offices of the Recorders, may ascertain the previous liens upon the property which he wishes to purchase. The records are constructive notice to all mankind. (1 Dallas, 435.) It is not a general custom in this government for mortgagees to receive the possession of title deeds. It may be done in some instances by very prudent persons who lend out money, *ex abundanti cautela*, but it is far from being generally practised. And, by *M'Kean*, C. Justice: In one case only can the mortgagee be affected by suffering the title deeds to remain in the hands of the mortgagor; and that is, where after the execution of the mortgage, and before the same is recorded, the mortgagor, on the strength of the title papers in his hands, borrows money on a second mortgage. If this second loan was made without knowledge of the first incumbrance, and before the first mortgage was put into the Recorder's office, there I should apprehend the first mortgagee should be postponed.

Evans's executors v. *Nicholas's administrators*. *Berks*, May, 1792. MSS. Reports.

It is settled by several decisions, that the words "grant, bargain and sell," in the 6th section, without more, when used in a deed, do not imply a warranty, or covenant of good title; but extend only to incumbrances made or suffered, and for quiet enjoyment, by, or from the grantor, and those claiming under him. MSS. Cases. See 2 Binney, 95.

The four remaining sections of this act provided for the appointment of Recorders of deeds; prescribed the amount of the official surety to be given before they entered on their duties, regulated their fees, and declared the punishment of extortion: but all these sections have been repealed and supplied, as will appear by the note to former edition; ante. page 96.

With respect to acknowledgments of deeds by *femes covert*, see post. chap. 605, and the notes thereto subjoined.