Priorities in the Law of Mortgages (continued)

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PRIORITIES IN THE LAW OF MORTGAGES

(Continued)

III.

A

RECORDING AND REGISTRATION STATUTES

Statute of 7 Anne Ch. 20 (1709)

An act for the publick registring of deeds, conveyances, and wills, and other incumbrances which shall be made of, or that may affect any honors, manors, lands, tenements, or hereditaments, within the county of Middlesex, after the twenty-ninth day of September, one thousand seven hundred and nine.

Whereas by the different and secret ways of conveying lands, tenements, and hereditaments, such as are ill disposed have it in their power to commit frauds, and frequently do so, by means whereof several persons (who through many years industry in their trades and employments, and by great frugality, have been enabled to purchase lands, or to lend monies on land security) have been undone in their purchases and mortgages, by prior and secret conveyances, and fraudulent incumbrances, and not only themselves, but their whole families thereby utterly ruined: for remedy whereof, may it please your most excellent Majesty (at the humble request of the justices of the peace, gentlemen, and freeholders of the county of Middlesex) that it may be enacted, and that it be enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament as-

sembled, and by the authority of the same, That a memorial of all deeds and conveyances, which from and after the twenty-ninth day of September, in the year of our Lord one thousand seven hundred and nine, shall be made and executed, and of all wills and devises in writing made or to be made and published, where the devisor or testatrix shall die after the said twenty-ninth day of September, of or concerning, and whereby any honors, manors, lands, tenements, or hereditaments in the said county, may be in any way affected in law or equity, may be registered in such manner as is hereafter directed; and that every such deed or conveyance that shall at any time after the said twenty-ninth day of September, be made and executed, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial thereof be registered as by this act is directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim; and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered at such times and in such manner as is hereinafter directed. . . .

Civil Code of California (Deering, 1929)

Section 1213. Every conveyance of real property acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagees; and a certified copy of any such recorded conveyance may be recorded in any other county and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance and where such original conveyance has been recorded in any county wherein the property therein mentioned is not situated a certified copy of such recorded con-
veyance may be recorded in the county where such property is situated with the same force and effect as if the original conveyance had been recorded in such county.

Section 1214. Every conveyance of real property, other than a lease not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless such conveyance shall have been duly recorded prior to the record of notice of action.

Section 1215. The term "conveyance," as used in sections twelve hundred and thirteen and twelve hundred and fourteen, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to any real property may be affected, except wills.

Section 1217. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

Section 1170. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the recorder's office, with the proper officer, for record.

Cahill's Illinois Revised Statutes (1929)

Chapter 30, section 31. All deeds, mortgages and other instruments of writing which are authorized to be recorded, shall take effect and be in force from and after the time of the filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.

Chapter 30, section 32. Deeds, mortgages and other instruments of writing relating to real estate shall be deemed, from the time of being filed for record, notice to subsequent
purchasers and creditors, though not acknowledged or proved according to law; but the same shall not be read in evidence, unless their execution be proved in manner required by the rules of evidence applicable to such writings so as to supply the defects of such acknowledgment or proof.

Annotated Indiana Statutes (Burns, 1926)

Section 13390. No conveyance of any real estate in fee simple or for life or of any future estate, and no lease for more than three years from the making thereof, shall be valid and effectual against any person other than the grantor, his heirs and devisees, and persons having notice thereof, unless it is made by a deed recorded within the time and in the manner provided in this act.

Section 13391. Every conveyance or mortgage of lands or of any interest therein, and every lease for more than three years, shall be recorded in the recorder's office of the county where such lands shall be situated; and every such conveyance, mortgage or lease shall take priority according to the time of the filing thereof, and such conveyance, mortgage or lease shall be fraudulent and void as against any subsequent purchaser, lessee or mortgagee in good faith and for a valuable consideration, having his deed, mortgage or lease first recorded.

Section 13393. When a deed purports to contain an absolute conveyance of any estate in lands, but is made, or intended to be made, defeasible by force of a deed of defeasance, bond or other instrument for that purpose, the original conveyance shall not thereby be defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded, according to law, within ninety days after the date of said deed.
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Code of Iowa (1927)

Section 10105. No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration, without notice, unless filed in the office of the recorder of the county in which the same lies, as hereinafter provided.

Section 10106. It shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner prescribed in this chapter, except that affidavits need not be thus acknowledged.

General Laws of Massachusetts (1921)

Chapter 183, section 4. A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section thirteen of chapter thirty-six, is recorded in the registry of deeds for the county or district in which the land to which it relates lies.

Cahill's Consolidated Laws of New York (1923)

Chapter 51, section 290. 1. The term "property," as used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years.

2. The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate.

3. The term "conveyance" includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one in revocation only, and an instrument postponing or sub-
ordinating a mortgage lien; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property. . . .

Chapter 51, section 291. A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, and such acknowledgment or proof duly certified when required by this chapter, may be recorded in the office of the clerk of the county where such real property is situated, and such county clerk shall, upon the request of any party, on tender of the lawful fees therefor, record the same in his said office. Every such conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration, from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded.

North Carolina Code (1931)

Section 3311. No deed of trust or mortgage of real or personal estate shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor or mortgagor, but from the registration of such deed or mortgage in the county where the land lies. . . .

Page's Annotated Ohio General Code (1926)

Section 8542. All mortgages, executed agreeably to the provisions of this chapter, shall be recorded in the office of the recorder of the county in which the mortgaged premises are situated, and take effect from the time they are delivered to the recorder of the proper county for record. If two or more mortgages are presented for record on the same day, they shall take effect from the order of presentation for record. The first presented must be the first recorded, and the first recorded shall have preference.
Section 8543. All other deeds and instruments of writing for the conveyance or incumbrance of lands, tenements, or hereditaments, executed agreeably to the provisions of this chapter, shall be recorded in the office of the recorder of the county in which the premises are situated, and until so recorded or filed for record, they shall be deemed fraudulent, so far as relates to a subsequent bona fide purchaser having, at the time of the purchase, no knowledge of the existence of such former deed or instrument.

Pennsylvania Statutes (1920)

Section 8822. All deeds and conveyances, which, from and after the passage of this act, shall be made and executed within this commonwealth of or concerning any lands, tenements or hereditaments in this commonwealth, or whereby the title to the same may be in any way affected in law or equity, shall be acknowledged by the grantor, or grantors, bargainor or bargainors, or proved by one or more of the subscribing witnesses thereto, before one of the judges of the supreme court, or before one of the judges of the court of common pleas, or recorder of deeds, prothonotary, or clerk of any court of record, justice of the peace, or notary public of the county wherein said conveyed lands lie, and shall be recorded in the office for the recording of deeds where such lands, tenements or hereditaments are lying and being, within ninety days after the execution of such deeds or conveyance, and every such deed and conveyance that shall at any time after the passage of this act be made and executed in this commonwealth, and which shall not be proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagor for a valid consideration, or any creditor of the grantor or bargainor in said deed of conveyance.

Lord's Oregon Laws (1910)

Section 7129. Every conveyance of real property within this state hereafter made, which shall not be recorded as
provided in this title within five days thereafter, shall be void against any subsequent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance shall be first duly recorded.

B

The foregoing excerpts from various recording statutes serve to illustrate the varying phraseology in use in different states and to indicate in a general way the nature of the recording system. They will serve as a basis for the discussion of the problems considered in this article. Not all of the problems connected with recording are dealt with herein, so, in dealing with a concrete case, the statute involved should be considered in its entirety together with any judicial interpretation thereof.

The English Statute of 7 Anne (1709) c. 20, which was applicable only to the county of Middlesex, is one of the earliest of the registry statutes. This statute provides that every deed or conveyance, made and executed after a certain date, shall be adjudged fraudulent and void against any subsequent purchaser, or mortgagee, for a valuable consideration, unless a memorial thereof be registered before the registering of the deed or conveyance, under which such subsequent purchaser or mortgagee shall claim. Nothing is said about "notice" or "bona fide purchaser." When the Court of King's Bench was called upon for the first time to construe this statute it was held that the preference given to the subsequent purchaser, or mortgagee, who registered his deed or conveyance first would not be affected at law by the fact that he had actual notice of the prior unrecorded deed. 2 That court stated its inability to give relief against fraud; 3 yet it recognized the impropriety of adhering to the

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2 Doe d. Robinson v. Allsop, 5 B. & Ald. 142 (1821).
3 "It must be, however, since the provision of the Supreme Court of Judicature Act, giving the rules of equity binding efficacy wherever they conflict with
letter of the statute in cases where doing so would result in protecting fraud rather than preventing it. The court of chancery had, many years before, recognized and adopted the rule that if a subsequent purchaser, or mortgagee, even for a valuable consideration, had received notice of a prior unregistered conveyance, or mortgage, his conveyance, or mortgage, though registered, is subordinate to the prior unregistered one of which he had received notice at or before the time he became a transferee. Although the court of chancery "was willing to apply its doctrine of notice in favor of unregistered deeds, it was not willing to consider the registration of a deed as equivalent to actual notice and gave 'no greater efficacy to deeds that are registered than they had before.' The doctrine of constructive notice from registration had therefore no place in England under this statute. In the nature of things, registration would hardly have allowed the scope for constructive notice which has

those of the law concerning the same matter, that the same doctrine [that of notice] is now enforced in legal as well as in equitable suits by the English courts." Pomerory's Equity Jurisprudence, 4th ed., § 659, note 2.

In this country the equitable doctrine of notice is recognized and enforced alike by the courts of equity and of law, "for the reason that both have jurisdiction in matters of fraud." Pomerory, § 659.

"The only point that remains to be considered in this case is whether the question of notice is not exclusively of equity cognizance.

"The decisions have come from the Court of Chancery, but whenever the point has occurred to the judges of the courts of the common law, they have recognized the existence and solidity of the rule. (Lord Mansfield, in 1 Burr. 474, and Lord Kenyon, in Peake's N. P. 190, 191.) And if the question of construction of the statute, and not merely of a trust or equity binding on the conscience, the cognizance of it must belong equally to a court of law. The design of the Act was to give notice, by means of the registry, and thereby prevent imposition, mistake and fraud. . . . Courts of law and equity are equally bound to give statutes a sound interpretation, in the prevention of mischief, and are equally bound to carry the intention into effect; and the courts of law have concurrent jurisdiction in all cases of fraud." Kent, Ch., in Jackson, ex. dem., v. Burgott, 10 Johns. 457, 462, 463 (1813).


5 Actual or constructive.
come to prevail in this country from the fact that here the deed has to be recorded and that the record is the main evidence of title.\(^6\)

The system of recording has been developed to its greatest extent in this country. Its history antedates even the statute of 7 Anne. The usage of recording deeds prevailed from the early settlement of New England and some of the southern colonies.\(^7\) The scope of operation of the recording statutes has been extended, rather than limited, where changes have been made, so that some of them include nearly every kind of interest that may be created in real property.

While the recording operates to preserve the muniments of title and to perpetuate the evidence of their voluntary execution,\(^8\) probably the greatest importance of recording is its effect on priorities as between successive transferees of the same real property from the same transferor.\(^9\) The rules of the common law and equity regarding priority are changed to some extent by the recording acts. At the common law, the title of a purchaser ordinarily depended, first upon the title of his vendor, and, secondly, upon whether the vendor transferred his title to the purchaser. If the vendor had no title, or if his title was defective, it was not material that the purchaser paid the full value of the property and thought he was acquiring a perfect title.\(^10\) Under this rule, the first purchaser to acquire the legal title prevailed. A subsequent purchaser from the same vendor, though paying the full value of the property, and thinking he was acquiring a good title, acquired no title under the second con-

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\(^6\) Percy Bordwell, Recording of Instruments Affecting Land, 2 Iowa Law Bul. 51, 52.

\(^7\) Webb on Record of Title, § 3.

\(^8\) Webb, \textit{op. cit. supra} note 7, at § 4.

\(^9\) "Recording becomes material only when there are double conveyances, etc., by the same person." Per Blease, J., in \textit{Epps v. McCallum Realty Co.}, 138 S. E. 297, 302 (S. C. 1927).

\(^10\) Tiffany on Real Property, 2nd ed., § 566.
veyance, for the reason that the vendor, having parted with his title, had nothing which he could convey. The recording acts have changed this rule. If the first purchaser fails to record the instrument under which his rights are claimed, and the instrument is recordable, a subsequent purchaser for value and without notice thereof will not be affected thereby. The doctrine that a bona fide purchaser of a legal interest will not be deprived thereof in a court of equity at the instance of the holder of a prior equitable interest, created by the same transferor, has been changed by recording statutes allowing or requiring the recording of the instrument under which the prior equitable interest is claimed. If such instrument is recorded before a transfer of the legal interest, the equitable interest will not be affected by the later transfer.

The courts have adopted various views as to the way in which the recording statutes operate. One is that such statutes are legislative extensions of the doctrine of estoppel; that they "rest upon and enforce the equitable proposition that he who knowingly conceals his ownership when he ought to disclose it shall not assert it to the detriment of his neighbor who has acted in reliance upon his silence." Professor Aigler says that "If the postponement of the earlier to the later deed was held only in those cases where the later grantee has actually been misled by the apparent state of the title as disclosed by the record, it might be said that 'Registry statutes are legislative extensions of the doctrine of estoppel.' But it is clear that the earlier deed must give way when there is present the situation stated in the statute whether the subsequent grantee was in truth misled or not. Whether he has ever been near the records or not is wholly immaterial in respect of his ability to rely on the non-record of an earlier deed."

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11 See Aigler, op. cit. supra note 1.
13 Aigler, op. cit. supra note 1, at p. 408.
Another view is that the recording acts operate according to the "doctrine that where 'one of two innocent persons must suffer by the fraud of a third party,' the one who was most at fault, or whose fault made it possible that there be any loss must suffer." Probably in only a very small percentage of the cases can it be maintained that the grantor in the prior unrecorded instrument has in any proper sense been guilty of fraud. "At least, the recording acts do not avail a subsequent purchaser only when the grantor was guilty of fraud."

Two more views as to the way in which the recording acts operate are set forth in *Epps v. McCallum Realty Co.* One is that these statutes "invest the grantor or incumbrancer with power to defeat a previous conveyance or incumbrance, if not recorded as provided, by a subsequent conveyance or incumbrance to one who has no actual notice of such previous conveyance or incumbrance. The holder of such previous conveyance or incumbrance, by complying with the recording acts, may wholly disarm the grantor or incumbrancer of such power, and thereby protect himself." According to this view, recording operates to preserve a position of advantage. Thus, if R, owner of Blackacre, mortgages Blackacre to E-1, and executes a later mortgage of the same property to E-2, E-1, by failing to record his mortgage, may put R in a position to divest the interest passing to him under the first mortgage, in favor of E-2 who has no notice of the first mortgage. So E-1 would lose any position of advantage that he would have had at common law or in equity, given to him by the force of operation of his conveyance, because of this power invested in R under the statutes and not necessarily because E-2 took without notice. At the common law, if the mortgage to E-1, is legal and that

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14 Smith's Heirs v. Branch Bank at Mobile, 21 Ala. 125, 135 (1852).
16 Aigler, *op. cit. supra* note 1, at pp. 408, 409.
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to E-2 is equitable, priority would go to E-1 by virtue of the force attached to the transfer to him. Equity has favored the prior legal interest as against a later equitable interest; and equity has generally refused to permit the defense of bona fide purchaser against a prior legal title. Under the early chancery practice this defense was available as against a prior legal title where the plaintiff was invoking the auxiliary, as distinct from the exclusive or concurrent, jurisdiction of a court of equity. These principles would be applicable at the common law and in equity where R purports to create a legal mortgage in favor of E-1 and subsequently purports to create a legal mortgage in favor of E-2. But, where the recording statute is applicable, E-1 invests R with a power, by not recording his mortgage, to displace his position of advantage, which he would have had at the common law, or in equity, by virtue of the prior transfer of the legal interest, in favor of E-2. This view is important where the recording statute allows a grantee a certain period of time within which to record his transfer. Suppose R, owner and possessor of Blackacre, executes a conveyance of a legal interest in Blackacre to G who subsequently records his transfer within the stated statutory period; between the date of execution and the date of recordation of this deed, R purports to convey to X, a bona fide purchaser for value. While G is entitled to priority over X, it would not be on the ground of notice, unless it be a fictitious notice. G has merely preserved his position of advantage, obtained by the force of operation of his transfer, by complying with the recording statute. But this method of approach would not be applicable if the transfer to G is of an equitable interest that is recordable and the transfer to X is of a legal interest. In Camp Mfg. Co. v. Carpenter recordation within the stated period, though after a subsequent transfer had

20 70 S. E. 497 (Va. 1911).
been made, was said to operate as constructive notice. This view would be a solution of transaction where the first transfer was of an equity and the second was of a legal interest.

The second view, and the one that is asserted generally by the courts in this country, set forth in the *Epps* case as to the way in which the recording of an instrument, authorized or required to be recorded, operates is that the record constitutes constructive notice to the subsequent transferees and other persons contemplated by the particular statute. Professor Aigler has discussed four situations, and suggested others, in which he says that this effect of recording is vital in determining priorities.\(^2\)

1. "Where the prior conveyance is of an equity and the later one is a transfer of the legal estate to one who is otherwise a *bona fide* purchaser for value it is of the utmost importance that it be determined whether the record of the earlier conveyance gave notice to the grantee of the legal estate. In such case application of the rules of priority as developed by the common law and equity would result in giving preference to the later grantee. It is held, however, that the earlier instrument being on record, the subsequent grantee took with constructive notice thereof, and, therefore, is to be postponed to the equity."\(^2\)

This assumes that the prior equitable interest is recordable for the recordation of an instrument not contemplated by the particular statute will not operate as constructive notice to the subsequent transferees contemplated by the statute.

2. "Whether after acquired interests shall be held to have inured to the benefit of the grantee in a deed upon which an estoppel can be rested as against a subsequent purchaser from the grantor in such estoppel deed, may very

\(^{21}\) Aigler, *op. cit. supra* note 1.

\(^{22}\) Aigler, *op. cit. supra* note 1, at p. 412, citing Edwards v. Kernan, 55 Mich. 520 (1885); Simonson v. Wensel, 27 N. D. 638 (1914); Parkest v. Alexander, 1 John. Ch. 394 (1815); Jarvis v. Dutcher, 16 Wis. 326 (1862).
properly involve a determination of whether recording gives notice or not. Take the typical case: A, without any interest or with only a limited interest, makes a deed purporting to convey absolutely to B and warrants the title thereto; B records; later on A gets in the outstanding interest and deeds the same premises covered by the deed to B to X who pays value and has no knowledge of the deed to B. As to what really happens when A gets in the outstanding interest there is an important difference of opinion.

One view is that when A gets in the outstanding interest there is an inurement thereof to the benefit of B, the estoppel being fed, as it is sometimes said. The estoppel deed is said to have a double operation, first as an estoppel, and second to pass the interest the moment A acquires it. Notice would have no scope of operation in this view; but prompt recordation by B would operate to preserve a position of advantage given to him by the force of operation of his conveyance. Another view is that an equitable interest arises in B subjecting A to an estoppel to set up his legal ownership. B is entitled to call for a conveyance from A, as soon as A acquires the interest, in equity; but the interest does not vest in B by virtue of an estoppel. The question of recordation operating as constructive notice arises in this view. If B obtains only an equity, it would have to be recordable to enable B to take advantage of the recording operating as constructive notice. If B's interest is not recordable, but is recorded, he ordinarily gains no advantage from the fact of recordation; he would have to rely upon some, or one, of the other species of constructive notice, or upon actual notice, to prevail as against the subsequent transferee for value. If B fails to record, then X would prevail under the second view, according to the rules of the

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23 Aigler, op. cit. supra note 1, at p. 413.
24 Jarvis v. Aikens, 25 Vt. 635 (1853); Tefft v. Munson, 57 N. Y. 97 (1874).
common law and equity; but, under the first view as to the way in which the estoppel operates, B would prevail over X by virtue of the force of the conveyance to B, both at the common law and in equity. The recording statutes, however, would operate to give a power to A to defeat the unrecorded deed in favor of X.

3. Under the statute of 27 Eliz., c. 4, conveyances in fraud of subsequent purchasers are declared void. "Though the contrary was held in England, it is the prevailing view in this country that in order for the subsequent purchaser to avoid the alleged fraudulent conveyance he must have been a purchaser for value without notice. It is further held that if the transfer claimed to have been fraudulent was recorded the subsequent purchaser is thereby charged with notice." The principal difference between the English doctrine and that prevailing in the United States is this: By the former, the mere execution of a "voluntary deed" raises the presumption—which cannot be rebutted—of fraud as against subsequent purchasers for value, while by the latter view a subsequent conveyance by a grantor who had made a conveyance to another transferee without consideration is presumptive evidence of fraud,—a presumption that may be rebutted by the transferee in the "voluntary conveyance." Where the subsequent purchaser has notice, actual or constructive, the presumption ceases to operate.

4. "In contests between claimants of artisans' or materialmens' liens, on the one side, and prior chattel mortgages or conditional sale vendors whose mortgages or con-

27 Doe ex dem. Otley v. Manning, 9 East 59 (1807).
28 Beal v. Warren, 2 Gray 447, 450 (1854); Cooke v. Kell, 13 Md. 469 (1859).
29 Aigler, op. cit. supra note 1, at pp. 413, 414.
30 Baltimore v. Williams, 6 Md. 235, 267 (1854); Cooke v. Kell, op. cit. supra note 28.
31 The decisions do not seem to have been influenced by the fact that the recording statute involved provided that no title passes as against creditors and subsequent purchasers unless the conveyance is recorded and not that the conveyance shall be fraudulent and void as against such persons.
tracts have been filed or recorded as prescribed, on the other, the case is made to turn, unnecessarily so it would seem, on the ground that the lien claimant had notice.”

The problem involved in this class of cases will be discussed more at length in a subsequent part of this paper. It is merely intended to point out here that priority has been made to depend upon notice from recordation.

In some states the recording statutes provide that an unrecorded transfer shall be void as against a subsequent purchaser in good faith and for a valuable consideration whose conveyance shall first be duly recorded. Various situations have arisen under this type of statute illustrating the attitude of the courts towards the way in which such a statute operates.

1. Suppose there are two successive purported transfers of the same land, from the same transferor to different transferees, neither of which have been recorded, and the later transferee is a bona fide purchaser for value. Who is entitled to priority? In Crouse v. Mitchell there were two unrecorded assignments of a leasehold interest to successive transferees, the later one being a bona fide assignee for value. The court held that “the general rule that, as between two unrecorded conveyances, the one first made has priority, applies.” If the second assignee had recorded his assignment first, a literal interpretation of the statute would have given him the preference. Since neither transferee recorded his transfer, the rule at common law and in equity would give priority to the first transfer of a legal interest, if both purported transfers were of such an interest; and the rule in equity would give priority to the first transfer of an equitable interest, if both purported transfers were of such an interest. In the Crouse case both transfers were of interests

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32 Aigler, op. cit. supra note 1, at p. 414.
of the same nature. If the prior transfer is of an equity and the latter is of a legal interest, both of which are recordable and not recorded, the bona fide later transferee for value should prevail. A recording of the earlier transfer of an equity, if the transfer is recordable, before the recording of the second transfer would, however, give priority to the holder of this interest.

2. Suppose the first transferee records his recordable transfer before the later bona fide purchaser for value records his conveyance; does the recording statute exclude all other adverse effect than that which it denounces against a transferee who fails to place his transfer on record? That is to say, does priority depend upon an abstract construction of the terms of the statute, or are the equities of the parties to be considered? In Wisconsin\footnote{Marling v. Milwaukee Realty Co., 127 Wis. 363, 106 N. W. 844, 5 L. R. A. (N. S.) 412, 115 Am. St. Rep. 1017 (1906). The principle involved in this case differs from that involved in the cases where one deals with the debt evidenced by a negotiable note, and another person has possession of the note.} priority has been made to turn upon a consideration of the equities of the parties. Thus, while the first transfer may be recorded first, it will not necessarily be preferred over a second transfer which is subsequently recorded. The earlier transferee might be estopped to claim priority as against the later transferee. In \textit{Marling v. Milwaukee Realty Co.}\footnote{Op. cit. supra note 34.} a mortgage on certain land had been assigned to $A$ by the mortgagee prior to a sale of the land by the mortgagor to $G$, but the assignment was not recorded until after the sale was consummated, the record being made approximately five years and four months after the assignment was made. At the time of the sale of the property a release of the mortgage was obtained from the mortgagee by payment to him of the amount of the mortgage by the vendor-mortgagor, the mortgagee promising to obtain and deliver the note and mortgage within a few days, which he failed to do, but instead absconded. It
was held that $A$ was estopped to enforce the mortgage as against $G$. The mortgagor was a dealer in real estate, so that the likelihood of its sale was apparent to $A$. And $A$ was bound to know that parties dealing with the title to the land would do so on the faith of the record. So the fact that $A$ recorded the assignment before the recording of the release and the consummation of the sale was immaterial. Clearly $A$ did not record her assignment within a reasonable time. As to this phase of the case, the court said:

"Since the adoption of the system of public registry of conveyances, the custom of prompt registration has been so nearly universal that omissions may well be considered neglect of those precautions customarily taken to assert a grantee's rights in the land, and, people generally, have become accustomed to believe that all rights will so appear and to act confidently on that assumption; hence such conduct is to be expected by one holding an unrecorded conveyance."

According to this view, priority of recording is not decisive of priority of right. A careless prior transferee might be estopped to assert priority of recording as against a later transferee for value and without notice.

3. Suppose a later transfer is first recorded. As to priority of right, the earlier transferee will prevail, unless the subsequent transferee not only shows the priority of recording but that he purchased in good faith and for a valuable consideration. In order to obtain the statutory preference, the subsequent purchaser must be a purchaser for a valuable consideration and without notice of the earlier transfer. Webb has stated the following rules that are applicable in this class of cases:

"Where each of two mortgages, given to different parties, is to secure indebtedness incurred in each case before the execution of either of them, neither one, while unrecorded, can claim a higher equity than the other; and in such case, even actual notice given to the second mortgagee before his mortgage is taken, cannot deprive him of the preference acquired under the statute by a first record."
The courts, in dealing with this situation, have reasoned that the taking of a mortgage by the second mortgagee to secure the payment of his debt does not prevent him from being a purchaser "in good faith"; and that there would not be an intent to defraud the first mortgagee, who had likewise taken his mortgage to secure an existing indebtedness. This view operates as an undeserved hardship upon the first mortgagee who has neglected to record his mortgage in favor of a second mortgagee who has suffered no harm therefrom, and results in a race for priority by recording where two creditors are trying to collect their debts. Granting that diligence in such a race should be encouraged, has not the first mortgagee likewise been diligent in the matter of obtaining a first mortgage? While the latter has not recorded, there is no deceptive situation as to the second mortgagee. It would seem that recording should only be necessary, to complete the transfer in such a case, where the second mortgagee acquired his mortgage without notice of the first mortgage.

Some statutes provide that until recorded a conveyance shall not be effectual to pass title as against creditors and subsequent purchasers for a valuable consideration. Under this type of statute, recording of a transfer is necessary for the completion thereof. So priority of right, as between successive transferees, depends upon priority of recording. A second mortgagee is not entitled to a preference over a first mortgagee, unless the former records his transfer first. Neither is the latter entitled to priority of right unless he records first. If both transfers are recorded simultaneously, the one executed first gives priority of right. Notice or lack of notice has no scope of operation in such a doctrine.

38 Moore v. Thomas, 1 Ore. 201, 204 (1855).
40 McHan v. Dorsey, op. cit. supra note 39.
41 McHan v. Dorsey, op. cit. supra note 39.

In Beers v. Hawley, 2 Conn. 467, 469 (1818), this type of statute was discussed as follows: "It is generally true, that the deed which is first recorded shall
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Where the recording statute does not in express terms make priority of right depend upon priority of recording, there is a conflict of authority as to whether priority of recording, or the want of it, is material. In some jurisdictions priority of recording gives priority of right. Thus, under a statute providing that deeds, conveyances, and agreements in writing affecting any interest in real estate shall take effect as to subsequent bona fide purchasers and incumbrancers by mortgage after filing for record, it has been held that the word "subsequent" has reference to the recording and not to the date of the execution of the instrument. A transfer executed between the date of execution and the date of recording of another transfer would not give priority of right; recording by the first transferee before the second transferee records operates to give the former priority of right. The view that is sustained by the weight of authority protects the subsequent bona fide purchaser regardless of priority of record; and, in most jurisdictions, a subsequent bona fide purchaser for a valuable consideration is entitled to priority of right as against a prior transferee, regardless of whether the later transfer was first recorded. This view should allow the first trans-

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44 Steiner v. Cilisy, 95 Ala. 91, 10 So. 240 (1891), rehearing denied in 95 Ala. 95, 11 So. 394 (1891); De Courcy v. Collins, 21 N. J. Eq. 357 (1869) (Chattel mortgage recording act); Craig v. Osborn, 98 So. 598 (Miss. 1923), discussed in a note in 37 Har. L. Rev. 1141; Swanstrom v. Washington Trust Co., 41 Wash. 561, 83 Pac. 1112 (1906).
feree a reasonable time, apart from a statutory provision on the matter, in which to record his transfer. Where the recording statute allows a specific time in which to record and the first transfer is not recorded within that time, a second competing transfer, whether executed within this time or after the expiration thereof, is entitled to priority.\textsuperscript{45} In the absence of any provision as to priority of recording, the policy of the statutes would seem to be duly observed by protecting one purchasing for value and without notice subsequent to the execution of the unrecorded instrument \textsuperscript{46} and after the expiration of a reasonable time from the date of execution of that instrument. Such statutes are designed to protect subsequent \textit{bona fide} purchasers against deceptive situations rather than to compel placing instruments on record. "The minority opinion, however, is not without merit, for it does tend to enforce a general and speedy recording of instruments."\textsuperscript{47} It is in keeping with the general practice of resorting to the recording books or records before purchasing land; and, in this connection, the policy of the recording acts is to make the recording books as complete a depository as possible of land titles.

\textsuperscript{45} Scheffer v. Fithian, 17 Ind. 463 (1861).
\textsuperscript{46} See Note, 37 Har. L. Rev. 1141, 1142; Webb, \textit{op. cit. supra} note 7, at §§ 13, 14, 166.
\textsuperscript{47} Note, 37 Har. L. Rev. 1141, 1142.

Professor Hanna argues: "Would not the penalty of subordinating an unrecorded conveyance to the rights of subsequent \textit{bona fide} purchasers seem to be a sufficient club to induce prompt recording of conveyances? If fear of such eventuality will not spur to quick action a grantee or mortgagee, is the additional penalty of subjecting him to the claim of an unknown prior grantee who may first record, (a far less probable contingency?) likely to be more potent? If not, what validity has the argument in support of the New York rule [the New York recording statute provides that an unrecorded conveyance shall be void as to any subsequent purchaser "whose conveyance is first duly recorded"] that it tends to enforce a general and speedy recording of instruments? . . . Does it not rather impose an additional undeserved hardship upon a negligent party for the benefit of one, who, unlike the subsequent \textit{bona fide} purchaser, has suffered no injury by reason of the neglect to record? Clearly the beneficiary is as morally reprehensible a person as the party punished. And the former's fault is the \textit{sine qua non} of the latter's difficulty." Hanna, Cases and Materials on Security, 717.
Where the recording statute expressly makes priority of right depend upon priority of recording, a *bona fide* quit-claim grantee whose deed was executed and recorded between the date of execution and the date of recording of a prior deed of bargain and sale has been held not to have priority of right in New Jersey.\(^4\) This is on the theory that a quitclaim deed does not pass any more rights than the grantor has, and does not give the one who claims under it the rights of a *bona fide* purchaser under the statute.\(^4\)

Where priority of right is not expressly made to depend upon priority of recording and the statute merely provides that a conveyance not duly recorded shall be void as to subsequent *bona fide* purchasers, it has been decided that a purchaser at a sale ordered in condemnation proceedings who delayed for about eight years getting a sheriff's deed to the land was not entitled to priority as against a *bona fide* transferee of the property whose conveyance was executed and recorded about a year before the sheriff's deed was obtained by the first purchaser.\(^5\) The order of condemnation was not a judgment, nor did it fix a lien upon the land.\(^5\) The record of the condemnation proceedings would not constitute notice.\(^5\) So the purchaser at a sale, ordered in such proceeding, would have to rely upon the constructive notice of *lis pendens*; and this notice would only be operative for a reasonable time after the sale until the deed of the sheriff is obtained. If that deed is obtained within a reasonable time after the sale, it will overreach any intervening transfers. This rule accords with the view that *lis pendens* is founded upon the necessity of both equity and

\(^4\) Meeks v. Bickford, 125 Atl. 15 (N. J. 1924), reversing a decree of the Court of Chancery, 122 Atl. 683 (1923).
\(^4\) See a discussion of the status of a quitclaim grantee, in a former part of this paper, 8 Notre Dame Law. 69-77.
\(^5\) Hammock v. Qualls, 139 Tenn. 388, 201 S. W. 517 (1918).
\(^5\) Hammock v. Qualls, *op. cit. supra* note 50.
\(^5\) Hammock v. Qualls, *op. cit. supra* note 50.
common law courts of keeping the subject of the litigation before the court and preventing frustration of the court's judgment or decree.

In another class of cases the solution of the problem of priority of right has been approached from the point of view of constructive notice. Suppose that the owner of certain land mortgages it to A, and then mortgages it to B, who has notice of the earlier mortgage and who records before the mortgage to A is recorded; that, after both mortgages are recorded, B assigns his mortgage to C, who has no knowledge of the mortgage to A. In Flynt v. Arnold 53 Chief Justice Shaw, in dealing with this situation, said that since B's mortgage was recorded when the mortgage to C was executed, it was constructive notice to C. This view, which is expressed in a dictum, is not supported by the earlier and later cases in Massachusetts, which adopt the rule that a purchaser examining the record of title is not expected to look beyond a "good conveyance" to his grantor; or that a purchaser, in tracing the record title down, need not examine the records after the date of recording of the conveyance to his grantor; that if he is required to look one day, or one page, beyond that which exhibits the title of his grantor, it will be impossible to say where the inquiry shall stop. In Vermont it has been held that a purchaser is bound by the constructive notice afforded by the recording of the first deed; that it is notice to him of the fact that a deed prior to that of his grantor has been made, but it is not notice that his grantor had notice of the first deed.56 The conveyance to the purchaser from the second grantee is preferred, not because the purchaser is himself a pur-

53 2 Met. 619, 623 (1841).
If B assigns his mortgage to C before A records, and C has no knowledge of A's mortgage and is an assignee for value, C would be entitled to a preference over A.
55 Morse v. Curtis, 140 Mass. 112 (1885).
56 Day v. Clark, 25 Vt. 397 (1853).
chaser without notice, for the registration of the prior deed is notice of its existence, nor because his grantor was a purchaser without notice, for that may or may not be true, but because the purchaser did not know that his grantor was not a *bona fide* purchaser. And thus one may secure protection, as though one were a *bona fide* purchaser, when neither he, nor any one through whom he derives his title, was in fact such a purchaser. In *Woods v. Garnett*\(^5\) the Supreme Court of Mississippi, in construing a recording statute similar to that existing in Massachusetts, discusses the Massachusetts rule and concludes that the better reason and weight of authority are opposed to the Massachusetts view. The Mississippi court argued:

"But for the registry law, where one has conveyed his title, he has nothing left to convey to another, and that other, with or without notice of the prior conveyance, would get nothing, for his grantor had nothing to convey. Now, the statute comes, and provides that, though a conveyance of the class named in the statute may be made, it shall, as to certain persons, *viz.*, creditors and purchasers without notice, be valid only from a certain time, *viz.*, the time when it is filed for record. In other words, the operation of the unrecorded conveyance is suspended until it shall be recorded as against creditors and purchasers without notice, and where recorded, it does not operate by relation as against such persons from the day of its execution, but is effectual only from and of the date of its delivery for record. But where filed for record it has full scope and effect against the world. One who buys after that event can find no protection in the statute, for its terms have been complied with by the holder of the adverse title. It is no answer to say that it is inconvenient to the purchaser to examine a long and voluminous record, made after the record of the title of his grantor. To this the sufficient reply is that, but for the registry acts, he would not have even the protection which the records afford, but would deal at his peril with his grantor, and secure only such title as he might assert. If that grantor had good title because a purchaser for value, without notice, that is a defense to his vendee; but if such grantor was not such purchaser, then the validity of the title he conveys must depend upon the character of his vendee; and, if such vendee is not a *bona fide* purchaser under the common

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law or the statute, we cannot perceive from what source a principle can be deduced which will afford him protection. It seems to us that one who buys an estate cannot invoke the protection of the registry act as against a deed recorded under such act at the time of his purchase."

Webb adopts the same view. He says: 58

"It is more in consolance . . . with the policy and broader spirit of the registry law that a subsequent purchaser should be chargeable by the record with notice of every conveyance emanating from any party through or under whom the purchaser claims and registered at the time his rights accrue." 59

The decisions in California, 59 South Dakota 60 and Wisconsin 61 reach practically the same result as that obtaining in Mississippi, but they proceed on a different principle. The recording statutes, involved in the cases decided in these states, provided that an unrecorded recordable transfer should be void as against a subsequent purchaser in good faith of the same property, whose conveyance should be first recorded. In the first place, it is decided that the operation of these recording statutes is not confined to successive purchasers of the same land from the same grantor, but that they apply to a contest between a remote purchaser through mesne conveyances from a grantor and an immediate grantee of such grantor. Secondly, it is decided that when a conveyance is made to a grantee who fails to record his deed until after another has received and recorded a conveyance from the same grantor, but with notice or knowledge of the

59 Mahoney v. Middleton, 41 Cal. 41 (1871).
60 Parrish v. Mahany, 73 N. W. 97 (S. D. 1897).
61 Fallass v. Pierce, 30 Wis. 443 (1872). This decision overruled the earlier view to the contrary in Ely v. Wilcox, 20 Wis. 529 (1866).
first deed, the first grantee is entitled to priority as against a purchaser from the second grantee, even though the latter purchaser has no knowledge of the first deed. The theory on which the courts in these states proceed is that when the first transferee records he becomes a *bona fide* purchaser whose deed is first recorded,\(^62\) and that the record of the first deed constitutes constructive notice to the purchaser from the second grantee,\(^63\) even though the deed to the second grantee is first recorded. Also, assuming that such record does not constitute constructive notice, the purchaser from the second grantee would have to record first in order to be entitled to priority over the first grantee.\(^64\) While the difference between this type of statute and that involved in the Massachusetts and Mississippi decisions must lead to a difference of construction, the question as to what extent a subsequent purchaser might reasonably be required to go in searching the record arises under both classes of statutes. Where the statute expressly makes priority of right depend upon priority of recording, it seems to presuppose carelessness on the part of a first purchaser in placing his conveyance on record. The operation of such a statute, so far as it goes in favor of a first purchaser, is not limited to the first, second, or any specified number of *first* recorded transfers to subsequent purchasers, or from one such purchaser to another, and consequently the right of the first purchaser to priority by the recording of his deed continues, or may continue after any number of subsequent conveyances have been recorded. The subsequent purchasers, one and all, may not have bought in good faith or for a valuable consideration; so the first purchaser will be entitled to priority


\(^{64}\) Fallass v. Pierce, *op. cit.* supra note 61.
over all of them. Suppose $A$ successively conveys to $B$ and $C$, the latter having notice of $B$'s transfer. $C$ records, and afterwards conveys to $D$, who has notice of $B$'s deed, and $D$ conveys to $E$, who has notice of $B$'s deed. Then suppose $B$ records his deed and subsequently $E$ conveys to $X$, who has no knowledge of $B$'s transfer. $B$ would be entitled to priority as against $X$. This difficulty would arise, also, under a statute not expressly making priority of right depend upon priority of recording. Under the latter type of statute, $B$ would usually be allowed a reasonable time in which to record as against subsequent purchasers from the same grantor, and he should be allowed a reasonable time in which to record as against one subsequent purchaser from another where the last one, as $X$ in the illustration used above, claims to be a *bona fide* purchaser. Where the statute allows the first purchaser a specified time in which to record, to be entitled to priority as against subsequent purchasers in good faith, a solution of the problem as to the extent of search would be much easier and could be more definite.

In a case where two successive purchasers from the same grantor are competing for priority of right, the first one may, because of delay in recording his transfer, lose a position of advantage, assured to him at the common law and in equity, as against the second transferee under either the Massachusetts or Wisconsin type of recording statute. The *extent of search* required would seem to depend upon the extent of time allowed, in the particular jurisdiction, to the first purchaser, from a *common grantor in the chain of title*, to record his transfer. The inconvenience involved under this view would not be great today under modern systems of abstracting. The inconvenience could be lessened by a recording statute allowing a first purchaser a short period of time, five days for instance, in which to
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record his conveyance and be protected as against a subsequent *bona fide* purchaser from the same grantor, or as against a *bona fide* purchaser from a second transferee who has notice of the first conveyance.

In another class of cases the question as to the extent of search required of a subsequent purchaser is equally important. Suppose *A*, who has no interest in certain land, purports to convey this land to *B* and warrants the title thereto; *B* records his conveyance; later on *A* obtains a conveyance of the land, records it, and then purports to convey it to *C*, who pays value and has no knowledge of the purported transfer to *B*. Whether the rule that *A* is not entitled, as against *B*, to claim the land after he acquired it is based upon an estoppel, or upon the equitable doctrine prevailing in Pennsylvania, the question as to how far *C* should extend his search arises. Is *C* entitled to stop when he finds a recorded conveyance to his grantor? Is *C* entitled to content himself with examining the records for transfers only from the time of the making of a conveyance to the party whose title he is examining? Suppose there is a statute in the particular jurisdiction providing that the after-acquired title of *A* should pass to *B* immediately upon acquisition of the land by *A*; would it make any difference that this statute was enacted before or after the recording statute? Such a statute would operate to pass the after-acquired title to *B*, and the result would be that *A* had no title to pass to *C*. So if *B* was careless in taking a conveyance from *A* when *A* had no interest to transfer, *C* was equally as careless in making a purchase at a time when the only interest which the common grantor had had passed to *B* under the operation of the statute or the doctrine of estoppel. In most jurisdictions a judgment lien is held to attach to lands acquired by the judgment debtor after the docketing of the judgment;65 and, accordingly, there must

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be the necessity of searching for judgment liens against the judgment debtor before, as well as after, he acquired the title. However, in *Ford v. Unity Church Society* 68 it is held “that a recorded deed by one who has no title, but who afterwards acquires the title by recorded deed, is not constructive notice to a subsequent purchaser in good faith from the common grantor”; that when the subsequent purchaser “searches till he finds the deed by which his grantor acquires the title, he is not bound to look for deeds made prior to that time,” such deeds being considered as not in the line of title. The statute referred to in this case provided that if a person purports to convey the fee to certain property at a time when he has no interest therein and later acquires the title to the property, such after-acquired title shall pass by the conveyance. The decision seems to thwart the operation of the statute in this class of cases. It does not seem to be unreasonable to require one who purchases the property to search the records for conveyances executed by his grantor before the latter ac-

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68 120 Mo. 498, 41 Am. St. Rep. 711 (1894).

"... where A, having no title, executed a mortgage to B, which was recorded, and then A, after the record of a deed of the premises to himself, conveyed to C, who was without actual notice of the mortgage, it was held that the record of the mortgage was notice to C, and that under the recording laws B was entitled to priority. [Tefft v. Munson, 57 N. Y. 97 (1874).] If at the time of the mortgage to B, and up to that of the conveyance to C, the title had been vested in A, defective only in that the deed to himself was not recorded, B would have been 'shipwrecked in the event'; but since his grantor's title, at the date of the mortgage, was wholly defective instead of partly so, B prevails. This unreasonable state of the law results from the want of merit in the rule that a purchaser is not bound to look back of the date of the conveyance to his grantor, as it may be shown of record; by reason of which the rule is subordinated to the operation of any other principle, whether of law or equity, that conflicts with it. In the case stated, it was the duty of C to examine the records for conveyances from A, and prudence would dictate that while engaged in the examination, it would be well for him to make it in full. As said by the court of Missouri in a case [Digman v. McCollum, 47 Mo. 372 (1871).] nearly similar, 'if he had searched the records as a prudent man should, he must have acquired actual knowledge of the deed (mortgage), and its contents as shown by the records. If he neglected this reasonable precautionary search, the consequences of that neglect he must bear. It would be unjust to visit them upon an innocent third party.'" Webb, *op. cit.* *supra* note 7, at § 162.
quired the title. Would not an abstract that is properly prepared exhibit the transfers made by the grantor before he acquired title? If so, a knowledge of such prior transfers could be had with but little inconvenience.

There is a class of cases where a proper search would have to extend back for a number of years. Where a charge is created on land by an instrument, such as a will, that is required to be recorded and is recorded, those who subsequently acquire the property and are obliged to make title through such prior instrument are required to carry their examination of the records "back at least twenty years from the date of search, especially in view of the fact that the common law presumption of payment does not arise until the expiration of that period." 67

Recordation of an instrument that is not recordable will not come within the operation of the statute. It is generally stated that the record of an instrument that is not recordable will not operate as notice to those persons protected by statute against unrecorded transfers. An instrument may not be recordable either because of the nature of the right it creates 68 or because it is not properly executed. 69 If the instrument is not recordable because of the nature of the right created by it, and if it is not recorded, priority as between the holder of the instrument and a subsequent transferee is governed by the rules of the common law and equity. But if such an instrument is recorded and a subsequent transferee sees the record of it, 70 he cannot be

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69 Bell v. Sage, 60 Cal. App. 149, 212 Pac. 404 (1922); Du Ross v. Trainor, 10 Pac. (2d) 763 (Cal. App. 1932).
70 Parkside Realty Co. v. MacDonald, 137 Pac. 21 (Cal. 1913); Walters v. Hartwig, 106 Ind. 123, 6 N. E. 5 (1886); Musick v. Barney, 49 Mo. 458 (1872).
entitled to rank as a bona fide purchaser. So one may gain an advantage by the fact of recording an unrecordable transfer.

A recordable transfer that is not recorded is effective or valid as between the parties thereto and their heirs and representatives. Some recording statutes provide that an unrecorded instrument is valid as between the parties thereto and those who have notice thereof. Other statutes provide that an unrecorded instrument is not valid "as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it." The recording is generally only of importance in preserving a position of advantage as against, or giving notice to, certain persons enumerated by, or within the contemplation of, the recording statute.

Where the statute prescribes a period of time for the recording of instruments, two considerations are presented: first, as to the effect of recording within the time; and second, as to the effect of recording after the expiration of the time. The general rule is that where an instrument is recorded at any time within the statutory period, it relates back to the date of its delivery and takes precedence over any transfer executed between the date of execution and the date of recording, though the second transfer was recorded before the first. Where the conveyance is recorded after the time specified it is generally considered as operating to give notice, or preserve a position of advantage, from the time of the recording. The grantee in the first deed is not entitled to insist that the recording after the expiration of the specified period shall relate back to the date of

71 See the California statute.
72 See the Massachusetts statute.
73 Webb, op. cit. supra note 7, at § 132.
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delivery, but he is entitled to the benefit of the record from the time it is actually made. Where two or more purported transfers of the same property are made to different transferees, and neither is recorded within its statutory time, priority would be determined just as if no period of time had been prescribed for recording, unless the statute operates to give priority to the one first recorded.75

Where there is no statutory provision allowing a specified period of time for recording, a conveyance is generally considered as operating to give notice, or preserve a position of advantage, from the time it is recorded.76 In some jurisdictions the transferee is entitled to a reasonable time within which to record his transfer, and a record made within such time relates back to the date of execution of the conveyance.77

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(To be continued.)

75 Op. cit. supra note 73. "The prior recording of the prior conveyance at any time after its execution will give it precedence. So will the prior recording of the subsequent conveyance give it precedence over a prior one subsequently recorded, although neither of them be recorded within the five days." Thayer, J., in Fleschner v. Sumpter, 6 Pac. 506, 511 (Ore. 1885).

76 Webb, op. cit. supra note 7, at § 131.