the State, see Ing v. the State, 8 Md. 287; Kierstead v. State, 1 G. & J. 231; State v. Norwood, 12 Md. 177. It has been held that if costs be given against the State in an action of this kind, it is no objection to the validity of the judgment, but, if it were, the Court of Appeals would treat it as a mere clerical error, Charlotte Hall School v. Greenwell *supra;* State, use of Robey v. Turner, 8 G. & J. 125. In the first named case, the Court observed that, on a failure of the plaintiff in his action, the Act of 1794, ch. 54, sec. 10, contemplates the entry of a judgment, and it could not be entered in any other manner than against the State, because in all the records and proceedings the State's name, and not the name of the *cestui que use,* is used as the plaintiff, and it could not therefore be entered against the *cestui que use.* Notwithstanding this, the only effect of the judgment is to create a liability in the *cestui que use* for the amount. On the rendition of the judgment, however, no execution can be awarded against the State; if it be, it is a pure clerical misprision.

In Selby v. Clayton, 7 Gill, 241, it was held that the security provided by the Act of 1801, ch. 74, sec. 10, was cumulative. When judgment is entered for the defendant costs are adjudged against the legal plaintiff **292** and the prevailing party *may proceed against him or the *cestui que use.* It will be observed that the Code does not in the corresponding section provide for an attachment against the party charged with the costs.

In the case of Wilson's Ex'x v. Hammitt, 1 H. & J. 141, it was held that the legal plaintiff has the control of the suit, and may prosecute or defend it as he pleases, and in that case an attachment for costs on the reversal of the judgment was issued against a *cestui que use,* who had instituted a suit in another's name without special authority.

However, in later cases it has been said that, to prevent fraud and injustice, Courts of common law, in the exercise of a *quasi* equitable jurisdiction, will protect the rights of *cetteux que use* or *cetteux que trust;* but the application must be made by way of motion, the matter whereof cannot be insisted on as a legal right, Green v. Johnson, 3 G. & J. 393. Yet the Courts have gone further, and have protected a *cestui que use* against the acts or admissions of the assignor, by refusing to allow the defendant to avail himself of the defence thus furnished to him, Owings v. Low, 5 G. & J. 134. See Wallis v. Dilley, 7 Md. 237; Shriver v. Lamborn, 12 Md. 170; Groshon, garn. v. Thomas, 20 Md. 234; Howard v. Carpenter, 22 Md. 10.