Fraud of grantee.—Cases of actual fraud by both grantor and grantee are not wanting in the books. Such were Strike v. McDonald, 2 H. & G. 191; Stewart v. Iglehart; McDowell v. Goldsmith, 6 Md. 319; Dorn v. Kostner *supra;* Schaeferman v. O'Brien, 28 Md. 565.[55] In McDowell v. Goldsmith it was settled after a review of the authorities, that declarations by a fraudulent grantor to the conveyancer at the time of preparing the deed, though out of the presence of the grantee, were admissible as part of the *res gestæ*, to show the intention with which it was made, when assailed by creditors under this statute, and prior, and sometimes even subsequent, declarations of the grantor, when they are explanatory of the transaction, and are fairly part of or connected with the *res gestæ*, are likewise admissible, and see Curtis v. Moore, 20 Md. 93. Where the deed is set aside for actual fraud, the grantee cannot claim reimbursement for any incumbrance discharged by him, or repairs, taxes or other expenditures made by him for preservation of the estate, Strike v. McDonald *supra*. Where, on the other hand, the deed is avoided for constructive fraud, but actual fraud is not detected, the grantee is entitled to hold the property to reimburse himself for outlays made by him in discharge of incumbrances on the land when the deed was executed, and taxes and assessments, and expenditures for the preservation of the property. In both cases he is of course charged with rents and profits, Strike v. McDonald *supra;* Kipp v. Hanna, 2 Bl. 21. An interesting question, however, is whether the grantee is entitled to a return of the consideration he may have paid for the conveyance. In Dulaney v. Hoffman *supra*, assignments were made to the defendants to sell and apply the proceeds in discharge of the debtor's endorsed notes, which was done in part and good endorsers of some of the notes were thereby discharged, but the defendants were compelled to account for the entire proceeds of sale, and see Crawford v. Taylor *supra*, before Chancellor Bland. And in Gardner v. Lewis *supra*, it was held that the insolvent trustee in an action of trover need not tender to the fraudulent grantee the money the latter had paid the grantor to get the property, and see Waters v. Dashiell *supra*. These cases were under the Insolvent laws, but their language is no stronger than that of this statute which *utterly avoids* any such conveyance. It would seem therefore a contradiction to say that a deed, utterly void for fraud or for any other cause, should be allowed to stand as a security for the repayment of money paid in furtherance of the fraud. And such is the rule where the deed is set aside for actual fraud.[56]

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[55] See Gebhart v. Merfield, 51 Md. 322; Earnshaw v. Stewart, 64 Md. 515; Diggs v. McCullough, 69 Md. 592; Hinman v. Silcox, 91 Md. 576; Downs v. Miller, 95 Md. 602; Wise v. Pfaff, 98 Md. 576.

Where fraud on the part of the grantor is proved, the failure of the grantee to testify and deny participation in the fraud, or to call an accessible and vital witness, raises a presumption against him. Dawson v. Waltemeyer, 91 Md. 328; Diggs v. McCullough, 69 Md. 592. Cf. Zimmerman v. Bitner, 79 Md. 127.

[56] Milholland v. Tiffany, 64 Md. 461. But even where the grantee actively participates in the fraud, he is in certain cases entitled to some measure