notwithstanding the express provisions of the Statute? It is on the ground of fraud in refusing to perform after performance by the other party, and to prevent the Statute from being an engine of that fraud, which it was the object of its enactment to prevent," *per Cur.* in Md. Savings' Institution v. Schroeder, 11 G. & J. 93; Hamilton v. Jones, 3 G. & J. 127.[4] And so if a fair and certain verbal agreement for the sale of

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[4] **Statute not to be made a vehicle of fraud.**—The Statute is not to be used as a vehicle of fraud and does not prevent proof of fraud. Hence where property is conveyed by an absolute deed but in reality upon trust, the grantee's denial of the trust is a fraud and the trust may be proved by parol. Rochefoucauld v. Boustead, (1897) 1 Ch. 196; Booth v. Turle, L. R. 16 Eq. 182; Haigh v. Kaye, L. R. 7 Ch. 469; Heard v. Pilley, L. R. 4 Ch. 548. Cf. James v. Smith, (1891) 1 Ch. 384. A wife conveyed leasehold property to her husband and subsequently joined in a mortgage of the same and covenanted to pay the mortgage debt, but the equity of redemption was reserved to him alone. On his death she claimed the property subject to the mortgage and was permitted to show by parol that she had conveyed the property to him only to enable him to mortgage it and that he had agreed to re-assign it to her, which if he had lived he would have done. The court said that the case fell within the authorities which forbade the Statute to be made a vehicle of fraud and it also apparently sustained the wife's claim as a resulting trust under the 8th section. *In re* Duke of Marlborough, (1894) 2 Ch. 133.

The later Maryland decisions announce the same results, and are generally grounded on the doctrine of resulting trusts, or of trusts which arise *ex maleficio*. Ruhe v. Ruhe, 113 Md. 601; Coyne v. Supreme Conclave, 106 Md. 57; Collins v. Collins, 98 Md. 475. Cf. Wilson v. Wilson, 86 Md. 638; Wiley v. Wiley, 115 Md. —. In Pickett v. Wadlow, 94 Md. 564, the defendant agreed with plaintiff to buy land for him at a mortgage sale for enough to pay the mortgage debt, to take the deed in his own name as security for the mortgage debt and also for another debt due him by plaintiff and to convey the property to plaintiff whenever plaintiff should pay him the sums so due. It was held that this oral agreement could be enforced in equity on the well established doctrine that an absolute conveyance may always be shown by parol in equity to be in fact a mortgage. See the cases on resulting trusts, (notes 104, 105 *infra*), where the deed is taken in the name of the person who lends the purchase money.

In Cole v. Cole, 41 Md. 301, a parol agreement to execute a mortgage was enforced on the principle that equity regarded that as done which ought to have been done. Judge Boyd, in delivering the opinion in Applegarth v. Wagner, 86 Md. 473, commented on the earlier decision as follows: "Although the facts in that case established a clear case of attempted fraud, the decision approached dangerously near the line drawn by the Statute of Frauds, and was only sustained because there had been a performance on one side and the refusal to perform on the other side amounted to a fraud." As to agreements to mortgage and defectively