ant Edmund Clagett, retained the possession of all the deceased's real and personal estate, using and employing it for the common

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Rev. Code, Art. 65, sec. 77. But in *White* v. *Davidson*, 8 Md. 169, it is said that the issuing of an injunction does not necessarily require a bond, for that is a matter resting in the discretion of the Judge who is to order it. See *post*, "Practice."

VI. INJUNCTIONS AGAINST JUDGMENTS AND EXECUTIONS. Equity will not relieve against a recovery at law, unless the justice of the verdict can be impeached by facts or on grounds, of which the party seeking the aid of Chancery could not have availed himself at law, or was prevented from doing it by fraud, or accident, or the act of the opposite party, unmixed with any negligence or fault on his own part. *Gott* v. *Carr*, 6 G. & J. 309, and in addition to the cases there cited, see *Sasscer* v. *Young*, 6 G. & J. 243; *Miller* v. *Duvall*, 26 Md. 47.

A party is bound to be present in Court, in person or by attorney, to take care of his rights, and cannot make the omission to perform this duty, the foundation of itself, of an injunction. If a defendant has the means of defence within his power, or if, by the exercise of due diligence he could have ascertained the same, and neglects to do so, and suffers a recovery to be had against him, he is precluded from obtaining relief in Chancery in relation to the same matter. *Ibid.* A defence which has been fully tried at law cannot be set up in equity, although it may be the opinion of equity that the defence ought to have prevailed. *Briesch* v. *McCauley*, 7 Gill, 190. The mere fact of the discovery of evidence since the recovery at law is not *per se* a sufficient ground for an application to equity for relief; but there must be conscience, good faith, and due diligence shown, as a condition upon which such application will be entertained. *Gorsuch* v. *Thomas*, 57 Md. 339. But where a party is not in fault by failing to use reasonable diligence, and is prevented from defending the action at law by fraud or accident, or the acts of the opposite party, equity will lend its aid and give relief. *Wagner* v. *Shank*, 59 Md. 313.

The fact that the defendant's attorney in a certain case, did not know of the existence of a former judgment recovered by the plaintiff, after process duly served on an officer of the defendant, (a corporation,) on an alleged identical cause of action before a Justice of the Peace, would not, of itself, entitle the defendant in the judgment rendered by the J. P. to an injunction to restrain the execution of such judgment, on the ground of fraud and surprise. *Darling* v. *Balto.* 51 Md. 1. If the second suit above mentioned was for the same cause of action as that on which the judgment was rendered by the justice, that fact ought to have been availed of by a plea of former recovery. *Ibid.*

G. applied for an injunction to restrain execution on the ground that he had paid the amount of the account filed at the extension of the judgment, before the suit was brought, and that T., the plaintiff in the judgment, subsequently agreed that he should have credit for that amount on the judgment; but that no such credit was given. He also alleged that the two credits entered on the judgment were erroneous, as being for amounts less than were actually paid, and that there would be but a small amount, if anything at all, due on the judgment, if proper credits were given. He did not, however, state the amount of the credits or when the payments were made. It was not alleged that the judgment was obtained by fraud, or by such surprise and mistake of T. that by the use of due diligence and proper