H. Clagett, John W. Clagett and Thomas Clagett, of the one part, and Charles Salmon of the other part. "Whereas, the said Thomas Clagett, one of the parties of the first part of this deed, hath lately commenced and intends pursuing the business of a merchant in the City of Baltimore; and whereas, the said Charles * Salmon hath agreed to give credit to, and to become surety **127**

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against the judgment. *Key* v. *Knott*, 9 G. & J. 342. In *Groff* v. *Hansel*, 33 Md. 161, it was held that fraud in obtaining a promissory note, &c., or a failure of consideration, may be relied on at law as a defence to an action on the note. And see *Gent* v. *Ensor*, 41 Md. 24. [But it would seem that the jurisdiction of equity in cases of fraud like the above is not lost, because Courts of law have subsequently acquired a like authority. Originally fraud was not admissible as a defence in actions *ex contractu* to enforce covenant, debt, &c. The jurisdiction of equity still exists. Whether it will be exercised or not, depends upon the circumstances of the particular case. As a general rule, it will not be exercised if the legal remedy of the defrauded party, either affirmative or defensive, is adequate, certain and complete. *Pomeroy Eq. Jur.* secs. 278, 911, 914.] When the bill to restrain execution distinctly charges that persons other than the defendant participated in the alleged fraud, they are necessary parties defendant. *Hill* v. *Reifsnider*, 39 Md. 429.

An execution upon a *supersedeas* enjoined, because the date of the confession omitted. *Dilley* v. *Shipley*, 4 Gill, 48. Where a judgment debtor paid plaintiff a part of his debt and proposed to pay the balance by the conveyance of a lot in which he had no interest in consideration of a release to be granted him, and then seeks to have execution of the judgment enjoined, it is asking the Court to compel the creditor to exonerate him without consideration. *Gurley* v. *Hiteshue*, 5 Gill, 217. As to restraining execution, for the purpose of enforcing an equitable set-off against the judgment, see *post*, sec. VII.

Though the Court of Chancery has not the power to review a decree of the Court of Appeals, either upon the facts upon which that Court acted or any others, yet when a state of facts has arisen since such decree was passed, showing its satisfaction, Chancery may interfere by injunction to prevent the decree from being used as an instrument of injustice, and an original bill is the proper form to be adopted under such circumstances. *McClellan* v. *Crook*, 4 Md. Ch. 398. *Vide* S. C. 7 Gill, 333.

An injunction against a judgment stays execution thereof, but the lien of the judgment is not lost or suspended. *Anderson* v. *Tydings*, 8 Md. 428. As to suspension of the judgment by appeal from order dissolving the injunction, see *Smith* v. *Dorsey*, 6 H. & J. 261.

When the sheriff, or other officer, is prevented by injunction from selling personal property taken in execution, he shall deliver back such property to the party from whom it was taken, and shall not be answerable to the plaintiff at law for the same. Rev. Code, Art. 65, sec. 78. But if the execution was consummated by a sale prior to the injunction, then the sheriff should not pay the money over to the defendant at law. *Dail* v. *Traverse*, 8 Gill, 41. But the rule is different in a case where real estate has been seized and the execution enjoined. After the dissolution of the injunction which had prevented a sale of the land, the proper mode is for the sheriff to proceed to sell under the original levy, which remains unbroken; or to have him commanded to make a sale of it by a *venditioni exponas*. *Cape Sable Co's Case*,