

RICHARD W. GILL AND HENRIETTA M. HALL, ADMR'S OF SOMERVILLE PINKNEY, vs. WILLIAM D. CLAGETT.	}	SEPTEMBER TERM, 1847.
--	---	-----------------------

[MISTAKE.]

If parties come to a settlement upon terms mutually agreed upon, and error or mistake occur in the settlement, a court of equity will rectify it and make it conform to the intention of the parties.

Equity will, upon sufficient parol proof, reform a contract or settlement in writing upon the ground of mistake, and then enforce its executions as thus reformed, though the answer denies the mistake. But strong proof must be adduced to overrule the answer denying the mistake.

[The facts of this case are sufficiently stated in the following opinion of the Chancellor, delivered on the 5th of November, 1847, and in 2 *Md. Ch. Decisions*, 151, and *ante*, 153, where other opinions in the same case are reported.]

THE CHANCELLOR :

This case is submitted to the court upon written arguments by the solicitors of the parties.

It is conceded, indeed it could not be denied, that courts of equity have jurisdiction in cases of mistake, and it is equally well settled, that if parties come to a settlement upon terms mutually agreed upon, and error or mistake occur in the settlement, a court of equity will entertain a bill to rectify the settlement and make it conform to the intention of the parties. It was at one time much doubted whether it was competent for a plaintiff who sought the specific performance of an agreement in writing to vary it by parol proof upon the ground of mistake, and then after having it thus corrected to insist upon its execution, and this right of a plaintiff was especially questioned when the answer of the defendant denied the mistake. These doubts, however, have been removed by the decision of Chancellor Kent, in the case of *Gillespie vs. Moon*, 2 *Johns. Ch. Rep.*, 585, and by the Court of Appeals, in the case of *Moale*