

Ogden v. Saunders.

for new proceedings to be had therein, not inconsistent with the judgment of this court.

Judgment reversed.

DEVEREAUX v. MARR.

Division of opinion.

This court cannot take jurisdiction of a question, on which the opinions of the judges of the circuit court are opposed, where the division of opinion arises upon some proceeding subsequent to the decision of the cause in that court.

IN this case, the judges of the Circuit Court of West Tennessee, after a judgment had been rendered in that court, *divided in opinion upon the question as to the amount of the security bond, to be given by [213] the party applying for a writ of error, whether the amount of the bond ought to be sufficient to cover the whole debt, or only for the costs and increased damages on the party failing to prosecute his writ of error with effect. Whereupon, the division of opinion was certified to this court, under the 6th section of the judiciary act of the 29th April 1802, ch. 291.

January 17th, 1827. The cause was argued by *Eaton*, for the plaintiff; and by *White*, for the defendant.

THIS COURT was of opinion, that it had no jurisdiction of the question on which the opinions of the judges of the circuit court were opposed, the division of opinion having arisen after the decision of the cause in that court.

Certificate accordingly.

OGDEN, Plaintiff in error, v. SAUNDERS, Defendant in error.

State bankrupt laws.

The power of congress "to establish uniform laws of the subject of bankruptcies throughout the United States," does not exclude the right of the states to legislate on the same subject, except when the power is actually exercised by congress, and the state laws conflict with those of congress.

A bankrupt or insolvent law of any state, which discharges both the person of the debtor, and his future acquisitions of property, is not "a law impairing the obligation of contracts," so far as respects debts contracted subsequent to the passage of such laws.¹

But a certificate of discharge, under such a law, cannot be pleaded in bar of an action brought by a citizen of another state, in the courts of the United States, or of any other state than that where the discharge was obtained.²

¹ *Mather v. Bush*, 16 Johns. 233; *Roosevelt v. Kellogg*, 20 Id. 208; *Raymond v. Merchant*, 3 Cow. 147; *Jaques v. Marquand*, 6 Id. 497; *Sebring v. Mersereau*, 9 Id. 344; *Hicks v. Hotchkiss*, 7 Johns. Ch. 297; *Wheelock v. Leonard*, 20 Penn. St. 440.

² *Boyle v. Zacharie*, 6 Pet. 348, 635; *Suydam v. Broadnax*, 14 Id. 67; *Cook v. Moffat*, 5 How. 295; *Baldwin v. Hall*, 1 Wall. 223; *Baldwin v. Bank of Newburg*, Id. 234; *Gilman v. Lockwood*, 4 Id. 409. Misapprehension existed, it seems, for a time, whether the second

opinion delivered by Mr. Justice JOHNSON in this case, was, in point of fact, the opinion of a majority of the court; but it is difficult to see any ground for such a doubt. The learned judge explicitly states, that he was instructed to dispose of the cause, and he goes on to explain, that the majority on the occasion is not the same as that which determined the general question previously considered. Ample authority exists for regarding that opinion as the opinion of the court, independently of what appears in the published report. When