*United States *v.* Thomas Tingey's Administrators.

Withdrawal of demurrer, after affirmance.

The court will not, on the motion of the plaintiff in error, instruct the circuit court to permit him to withdraw his demurrer, after an affirmance of the judgment of the circuit court; although this might have been done, had the judgment been reversed.

Swann, of counsel for the plaintiff in error in this cause, moved the court to amend the judgment entered in this cause, by instructing the court below to permit him to withdraw his demurrer: On consideration whereof, this court is of opinion, that although this might have been done, upon a reversal, yet it cannot be done, where the judgment of the court has been affirmed, as this court cannot disaffirm its judgment.

Whereupon, it is ordered by the court, that the said motion be and the same is hereby overruled.

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*James Greenleaf's Lessee, Plaintiff in error, *v.* James Birth, Defendant in error. [*132

Bills of exception.—Land-law of Maryland.—Evidence.—Powers of attorney.

It is to be understood, as a general rule, that where there are various bills of exception filed, according to the local practice, if, in the progress of the cause, the matters of any of these exceptions become wholly immaterial to the merits, as they are finally made out on the trial, they are no longer assignable for error, however they have been ruled in the court below.[1]

It may be gathered from the decisions of the courts of Maryland, that on the trial of a question of title to land, no evidence can be admitted, of the location of any line, boundary, or object not laid down on the plats or re-survey; and that a witness, who was not present at the re-survey, is not competent to give evidence as to the lines, objects and boundaries laid down in such plats. These rules appear to rest on artificial reasoning, and a course of practice peculiar to Maryland.

The court do not find it to have been decided by the courts of Maryland, that no testimony is admissible, to prove a possession of the land within the lines of the party's claim, laid down in the plat, except the testimony of some witness who was present on the re-survey. Upon the general principles of the law of evidence, such testimony is clearly admissible; a party has a right to prove his possession by any competent witness; whether he was present at the re-survey or not.

In the ordinary course of things, the party offering evidence is understood to waive any objection to its competency as proof; it is not competent for a party to insist upon the effect of one part of the papers constituting his own evidence, without giving the other party the benefit of the other facts contained in the same paper.

A power of attorney was given by C., to A. and B., to make, in his name, an acknowledgment of a deed for land in the city of Washington, before some proper officer, with a view to its registration, constituting them "the lawful attorney or attorneys" of the constituent; A. and B. severally appeared before different duly-authorized magistrates, in Washington, at several times, and made a several acknowledgement, in the name of their principal: *Held*, that the true construction of the power is, that it vests a several as well as a joint authority in the attorneys; they are appointed "the attorney or attorneys;" and if the intention had been to

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[1] When it is sought to apply the rule, that a court of error will not reverse for an error that works no injury, it must be shown, beyond doubt, that the alleged error neither did, nor could have prejudiced the party against whom it was made. Deery *v.* Cray, 5 Wall. 595; Smith *v.* Shoemaker, 17 Id. 630. If it is only to be seen by a mere preponderance of evidence, and the error be substantiated, the judgment must be reversed. Smith *v.* Shoemaker, *ut supra*. And see Stokes *v.* People, 53 N. Y. 164.

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