

Boyle v. Zacharie.

tificates of survey were never recorded in the surveyor's office of Monongalia county, nor there filed; but were surreptitiously returned to the register's office, and patents obtained thereon." It does not appear from the bill of exceptions, that any evidence was offered by the defendants, which was rejected by the court, to sustain this allegation of fraud. Nor does it appear, that any specific instructions were asked of the court, on any evidence before the jury, conducing to prove the facts here alleged. The statement can only be understood to refer to the course of argument which the defendants' counsel, in the court below, deemed it their duty to pursue before the jury; and which forms no part of the case now before the court.

Other parts of the bill of exceptions contain a statement of various grounds taken in the defence below; but as no instructions to the jury were requested on the points thus made, they form no ground for a revision of the proceedings by a writ of error.

On a careful consideration of the points made in the bill of exceptions, this court are of opinion, that there is no error in the judgment of the court below; and that the judgment must, therefore, be affirmed, with costs.

Judgment affirmed.

*348] *HUGH BOYLE, Plaintiff in error, v. ZACHARIE and TURNER, Defendants in error.

Constitutional law.

The judges of this court, who were in the minority of the court upon the general question as to the constitutionality of state insolvent laws, concurred in the opinion of Mr. Justice Johnson, in the case of *Ogden v. Saunders*, 12 Wheat. 213; that opinion is, therefore, to be deemed the opinion of the other judges, who assented to that judgment. Whatever principles are established in that opinion are to be considered no longer open for controversy, but the settled law of the court.

ERROR to the Circuit Court of Maryland.

Before this case came on for argument, *Wirt*, in behalf of the plaintiff (the original defendant), inquired of the court, whether the opinion of *JOHNSON*, Justice, delivered in the case *Ogden v. Saunders*, 12 Wheat. 213, was adopted by the other judges who concurred in the judgment in that case.

MARSHALL, Ch. J., said:—The judges who were in the minority of the court upon the general question as to the constitutionality of state insolvent laws, concurred in the opinion of Mr. Justice *JOHNSON* in the case of *Ogden v. Saunders*. That opinion is, therefore, to be deemed the opinion of the other judges who assented to that judgment. Whatever principles are established in that opinion, are to be considered no longer open for controversy, but the settled law of the court.

Judgment affirmed.