

at the instance of the plaintiff, and on the ground that the verdict was insufficient and void, and the plaintiff, having had the benefit of a second trial, and failed, cannot now, I think, be allowed to question the legality and propriety of the proceeding.

The court considered it as a principle, established beyond controversy, that where there is a location on the plots by either of the parties, of a tract of land, deed, plot, &c. and there is no counterlocation by the adverse party, such location is admitted.

It is also established, that no evidence can be given of the location of a deed, plot, &c. which does not correspond with it.

In this case the proceedings, certificate and plot, of the commissioners, being variant from the location made on the plots by the defendant of the said proceedings, certificate and plot, could not legally be admitted as evidence. The defendant having produced and read the same to the jury, without objection being made to the legality of the evidence, could not render the same legally admissible when offered by the plaintiff; and this court are of opinion, that the court below did not err in rejecting the said testimony, and do affirm the judgment.

GANTT, J. dissented as to the opinion expressed on the bill of exceptions.

JUDGMENT AFFIRMED.

WOOD VS. GRUNDY & THORNBURGH'S LESSEE,

JUNE.

APPEAL from Baltimore county court. *Ejectment* for a lot situate in the city of Baltimore, in that part of the

The proceedings of the commissioners of bankruptcy are not evidence to

prove the act of bankruptcy committed by the bankrupt—the proceedings being *res inter alios acta*, and not evidence according to the principles of the common law, and not made evidence by the laws of the U. S. which relate to this subject.

Where the demise in a declaration in ejectment was stated to be on the 1st of January 1801, and the conveyance offered in evidence, under which the plaintiff claimed, was dated on the 23d of February 1802—*Held*, that an ejectment is an action to try the right of possession to the land in controversy. The lease, entry and ouster, laid in the declaration, are fictitious, and substituted in the place of a real lease, actual entry and ouster. The time of the demise is matter of substance, and not form, and the plaintiff must show a title in his lessors anterior to the time of the demise, because without such title they could not make a real lease.

In an action for the *mesne profits*, the plaintiff can recover profits from the time of the demise, without showing title, the defendant being concluded by it. But if he claims profits prior to the time of the demise, the defendant may controvert his title.

The court will allow the plaintiff in ejectment to amend his declaration, by changing the time of the demise, at any time before verdict, on such terms as will impose no hard-ship on the defendant.

The second section of the act of 1809, *ch* 153, relative to the amendment of judicial proceedings, does not extend to matters of substance, but to form.

The plaintiff in ejectment gave in evidence a grant to E. H. in 1793, for a tract of land called L. L.; also an act of assembly passed in 1792, which recited that J. E. H. had set forth that he was seized and possessed of L. L., &c. and directed that L. L. should be laid out and torn part of B. town; also that lot No 587 was part of L. L., so claimed by J. E. H., and first off as part of the said town; that the lot was conveyed by J. E. H. to H. D. who possessed it from 1793 to 1794, when he conveyed it to A. B., who also possessed it until 1802, when he conveyed it to the lessors of the plaintiff—*Held*, that the plaintiff had no right to recover, there being no title deduced from the grantee of L. L. to J. E. H., and there being no possession proved in A. B., and those under whom he claimed, sufficient to entitle the plaintiff to recover without showing title.