merely to direct the clerk to enter such general issue pleas on the Docket, but if required, I could soon draw them up, and thereupon immediately sat down and drew up the pleas at the bar, and handed them over to the clerk in the view of the Court and the plaintiffs counsel, and directed him to file them in the case, which he did, no objection to it being made by any of the plaintiffs counsel. I did not at the time suppose that there was any Judgment actually rendered in the case or I certainly would not have filed the pleas. And I am positive that not one word was said by me or any person in my hearing of filing the pleas de bene esse. - After the pleas were filed the question and the only question discussed was whether the Court would receive the defence on warrant, it not being filed until the trial or second term of the Court. The pleas had been agreed on by my associate counsel and myself in the early part of the Court and long before the case had been reached on the Docket, and if we could have supposed that the plaintiff's counsel would required them to be reduced to writing we should have done so before the case was reached. I heard nothing of the Jury being retained by the Court for the purpose of trying this case, and as far as I acted as counsel for the Defendant, I never assented to this discharge, nor in any manner assented to a Judgment of any kind against the Defendant, nor did I understand or suppose that a Judgment had been or would be rendered against the Defendant by default or nil dicit, I considered the case as under a curia as to the Defendants right to his defence on warrant until I think on the last day of the Court I heard from my associate counsel that the Court had given a Judgment against the Defendant. I then returned to my home in Frederick. On my return at the next term of the Court my attention was again called to the case, as the plaintiffs were about to issue a writ of ha. facias. The counsel for the Defendant then advised an appeal from the Judgment to the Court of Appeals. - The Court on application for the purpose by the Defendants counsel, fixed the penalty of the appeal bond. I was about to propose the appeal bond, and for that purpose called on the clerk for a short copy of the Judgment which had been rendered in the case by the Court. It was then that the erroneous character of the Judgment was manifest and so it has remained ever since. The aforegoing are the facts substantially to the best of my recollection and belief of them. -

Fred.k A. Schley. -

State of Maryland, Washington County, Set: On this 11th day of December 1848 - Frederick A. Schley made oath in due form of law before me the subscriber, a Justice of the Peace of the State of Maryland in and for Washington County that the aforegoing statement of facts are true as therein set forth to the best of his knowledge, recollection and belief. - Sworn before

Wm. McK. Keppler. -

To their Honors - Judges Buchanan and Marshall, Gentlemen:

In an Ejectment cause decided in this Court at last November Term and on which an appeal was taken at the last term, a difficulty

has arisen in making up the record by reason as we think of a small clerical inadvertency. We come to you to set us right, not doubting but the facts will be full and fresh in your recollection. We have drawn up and enclose a Judgment drawn up in the appropriate form, which we would ask you to sign and return to govern the clerk and others in the matter. We shall exhibit this application (before mailing it) to Mr. George Schley, to give him room to object or correct us if we be at all in error. The minutes of the Court shew that the adjournment of November Term occurred on Friday Decr. 11th Judge Buchanan being alone upon the Bench. On the previous day (the 10th) both of you were present and actively concerned in the matters we are about to detail. When we reached the case of Leushwa and others against Leushwa et al. 175, we demanded a Judgment. It was very near the end of the Docket and the last time of going over, Mr. Frederick - Schley was absent - Mr. George Schley (the counsel of record) proposed to take defence on warrant and claimed a continuance. We resisted both; on the ground as to defence on warrant, that it was too late, being after the rule day and two rule days had passed - and the continuance because of the Defendants inability and irresponsibility for mesne profits &c. Mr. Schley spoke of various matters and among others a will which had been set aside at the previous Court and which he might again set up by way of defence, but we showed to the Court that every thing mentioned by him related to title and could not be strengthened or illustrated by location. - The Court, as well as ourselves, tendered a trial on the general issue, but, this he declined, insisting on a continuance and when that was refused, said he could not try it, nor would he give a Judgment. On this Judge Marshall smilingly remarked "but we can make you give one, or give one for you". He said that he could not but the Court could do as it pleased; or to that effect - Whereupon the Court ordered Judgment to be entered. There was at that time no plea whatever in the case - It was fully and completely a case of nihil dicit: a refusal to plead, or to try, or to confess. The Court passed on to other causes on the Docket. The entries on the Clerks Docket are in the ordinary form, and the word "Judgment" written at the usual distance below the line recording the usual confession; and the Judgment is dated Decr. 10th - On the same day some time after the Judgment was given, Mr. Frederick - Schley came into Court, and finding how the matter had been decided, while other matters were in progress, drew up a plea of not guilty and defence on warrant, which, with the declaration, are also enclosed for your view, - and the first time he found the Court at leisure, invited your Honors attention back to the case you had decided No. 175 - He moved that it should be opened to receive the defence he then held in his hand, and then handed over to the clerk. We need not recapitulate what he advanced as to the general practice in the matter of Ejectment causes, and to shew that the defence on warrant was in time, &c. &c. The Court heard him at length, as well