

An *ex parte* petition to appoint a trustee to sell under a will, may be treated as a creditor's suit; and the creditors of the testator notified to file the vouchers of their claims. (a)

On a return *cepi* to an attachment, the sheriff may be ordered to bring in the body.

THIS petition was filed on the 6th of August, 1817, by Edward Thomas, in which he states, that the late William Deakins had, by his last will, devised his real estate to be sold by his executor *Francis Deakins, for the payment of his debts; that Francis Deakins had died, leaving the trust reposed in him un- 399
executed; that letters of administration, *de bonis non* with the will annexed, had been granted to John Hoyer; and that the petitioner was a creditor of the testator to a large amount, as appeared by a short copy of a judgment then exhibited. Whereupon he prayed, that another trustee might be appointed, according to the provisions of the Act of Assembly, 1785, ch. 72, s. 4, who should be directed to make sale of the property devised, for the payment of the debts of the deceased.

The will of the late William Deakins, so far as it concerns this case, is in these words: "I give and bequeath to my wife Jane, and her heirs forever, the three lots upon which we now dwell, in Georgetown, together with all the houses, buildings, improvements and appurtenances thereupon being, and thereunto belonging; also that house and lot in Georgetown, whereupon George Black now lives. My tracts of land at or near the mouth of Senaca Creek, in the County of Montgomery, the one called Senaca Landing, the other called Fortune, supposed to contain upwards of one hundred and fifty acres, be the same more or less. All which I give to my said wife and her heirs forever."

"I hereby give and devise the whole of my estate, both real and personal, not hereinbefore devised, to my brother Francis Deakins, and his heirs forever; for the uses and purposes of this my will hereinafter expressed. My will is, that all my just debts be paid, in the first place, out of the property so devised as aforesaid to my brother Francis; and in the manner of paying those debts my will is, and I so direct, that all my bank engagements be first paid and discharged, so as in the first place to exonerate and indemnify all and every person whatsoever, who may in any manner be answerable for me, on account of their endorsements upon any paper, or on account of any engagements they may have entered into for me with any bank; and secondly, I do direct, that all debts due from me, wherein others stand bound for me as securities, or as endorsers, or in any other way, be paid off and discharged, so as to exonerate and indemnify any and every person whatsoever, who stands in any manner bound for me; and lastly, that all other

(a) Cited in *Williams v. West*, 2 Md. 186; *Dorsey v. Thompson*, 37 Md. 46.