

KILTY, C., 27th April, 1819.—It appears that the land devised Mrs. J. Deakins has been considered by the trustee as liable to sale under the decree, instead of the estate devised to Francis Deakins for the payment of debts. The trustee is, therefore, directed not to proceed to the sale of the land mentioned in the petition and in the advertisement, lying at the mouth of the Seneca, until further order; which may be made on hearing after such notice as may be directed.

On the 6th of June, 1821, John Hoyer filed his bill of revivor, stating that Edward Thomas had died without answering his bill filed on the 18th of January, and that he had, by his will appointed William R. King and Edward T. Hebb his executors, against whom he prayed that his suit might be revived, and therefore prayed subpoenas against them.

After which, John Hoyer, on the 30th of June, 1821, filed his petition, in which he recites all these before-mentioned proceedings, and that the sale might not be made before the determination of his suit commenced by his bill filed on the 18th of January, he prayed that the trustee might be directed to suspend the sale until further order. The allegations of this petition were verified by his affidavit.

KILTY, C., 2nd July, 1821.—In the bill by Hoyer against Thomas, no mention was made of the decree for a sale, which, if improperly obtained, ought to be set aside. At present the trustee John A. T. Kilgour is directed not to make any sale under the decree till further order.

On the 22nd of January, 1822, the defendants King and Hebb put in their joint answer to the original bill and bill of revivor of Hoyer, in which, after admitting most of the facts stated in the bill, they allege by way of avoidance, that Hoyer had it not in his power to make them a good title to the lands mentioned in the agreement; that he had not complied with the agreement on his part, by reason of which they were in no respect bound by it; that the validity of the agreement had, by plea, been put in issue in a suit at law between them, but had been withdrawn and a judgment by confession rendered; and consequently, it could not now be of any avail to the plaintiff Hoyer.

**403** \*BLAND, C., 24th November, 1824. The arguments of counsel having been heard, the proceedings were read and considered.

This case has been brought before this Court by two separate and original proceedings, which have now become intimately and necessarily blended. The *ex parte* petition of Edward Thomas