

brought in the first part of it; and the bill of John Hoyer introduced the second part. These two distinct proceedings, moving separately, and apparently having entirely different objects, were shewn to have an intimate connection with each other by the petition of Hoyer; and were linked together by the order of the 2d of July, made on that petition. Looking then into all the proceedings and exhibits, the case as it now stands before the Court is this:

William Deakins being seized of certain real estate, made his will disposing of the whole, and died. He gave a part of his real estate to his wife Jane; and the rest he devised to his brother Francis Deakins, who he appointed his executors, in trust, in the first place, to be sold for the payment of his debts. In May, 1804, Edward Thomas obtained a judgment against Francis, the executor of William, for a large sum of money, with interest and costs. Francis died without having sold the real estate of his testator for the purpose of executing the trusts reposed in him; and administration *de bonis non* was granted to John Hoyer. After which, by a written agreement between John Hoyer and Edward Thomas, it was stipulated, that in consideration of certain lands in Virginia being conveyed to Edward, he should assign over all his rights to the judgment he had obtained against Francis, to John Hoyer. After which Edward Thomas filed his petition here; upon, and subsequent to which the before mentioned proceedings were had.

Had Francis, the testamentary trustee, attempted to sell the real estate devised to Jane, he might have been restrained by an injunction; or if he had made a sale, it would have been deemed void. And if he had attempted to sell that real estate which was actually devised to him to be sold for the payment of the testator's debts, under the pretence of paying debts, when in fact and truth there were no debts really due, those interested in the estate might have had their interests protected by an injunction. I conceive there could have been no doubt of the propriety of the exercise of such an authority in restraint of the testamentary trustee Francis Deakins, were he living.

Edward Thomas expressly founds his petition upon the Act of * Assembly which provides, that this Court shall have full power and authority, upon the application or petition of any person interested in the sale of the property devised as this was, to appoint a trustee for the purpose of selling and conveying such property, and applying the money arising from the sale to the purposes intended. 1785, ch. 72, s. 4. But in appointing a trustee, under this law, as a mere successor to the testamentary trustee, it could not be presumed, that the Court intended to confer upon him an authority more extensive than that to be found in the will, or instrument specifying the objects of the trust. Hence the stay of proceedings, or injunction upon the trustee, so far as re-