

gards the interest of those who claim under Jane, the facts having been admitted, must be made perpetual.

But the purpose to which the money arising from the sale was to be applied, was among others, the payment of this debt said to be due to Edward Thomas; if it had been shewn, that there was, in fact, no debt due to him, the trustee Francis Deakins would not have been allowed to sell, upon the pretext of a necessity to do so, to satisfy that debt. And consequently, the Court will not now appoint and authorize a trustee to take the place of Francis, and do that very act which it would have prohibited Francis from doing were he alive.

The order of the 2d of July, 1821, operates as, and must be considered in the nature of an injunction. And in looking into the answer of the executors of Edward Thomas, to see whether there is any thing there which will authorize or require the rescission or dissolution of the injunction order, I find that none of the material facts upon which it was originally based have been denied or removed; therefore,

It is ordered, that the authority conferred on the trustee appointed by this Court to make sale of the real estate of the late William Deakins, be construed to extend only so far as the same may be warranted by so much of the will of the late William as clothed his late brother Francis Deakins with authority to sell the same, and no further. And it is moreover ordered, that no sale whatever be made, by any trustee appointed by this Court, of any portion of the real estate of the late William Deakins, which by his will was authorized to be sold for the payment of his debts, for the purpose of paying the debt now alleged to be due to the  
**405** \*executors of Edward Thomas, deceased, until the final hearing of this case, or further order.

After which a commission was issued, by virtue of which testimony was taken in this case under the name of Hoyer against King and Hebb; and the whole matter was again brought before the Court.

BLAND, C., 14th December, 1827.—This case standing ready for hearing, the solicitors of the parties were heard, and the proceeding read and considered.

The late Edward Thomas, in the year 1804, obtained a judgment against Francis Deakins, executor of the late William Deakins, for the sum of \$3,390.50, with interest from the 1st of November, 1797, and costs. After which, Francis Deakins died, and administration *de bonis non* upon the estate of the late William, was granted to the plaintiff Hoyer. On the 26th of March, 1805, soon after Hoyer had thus obtained letters of administration, he entered into an agreement with Edward Thomas to let him have certain