

lands, as therein described, in Randolph, Hampshire, or Hardy County, in Virginia, to be shewn by Hoye, when called upon, to the value of \$3,050.65, in full satisfaction of Thomas' claim against the estate of the late William Deakins. In consideration of which Thomas agreed to assign his judgment to Hoye. And in case Thomas should neglect to designate the lands, and have them valued, in the manner specified, before the 1st day of July then next, Hoye was to have so much of certain lands laid off and conveyed, as, at five shillings per acre, would amount to the sum of \$3,050.65. And then Hoye stipulates to have the conveyance made and the deed ready for Thomas by the last day of July then next.

A few days prior to the 7th day of December, 1805, Elijah Butler surveyed 4,576 acres of land, as he says in his letter to the plaintiff, for Edward Thomas; but there is no proof that Thomas ever knew of, or assented to this survey, much less, that he accepted of the land thus laid off. On the contrary, it appears, by a letter of Edward Thomas, dated on the 16th of December, 1805, and another of the 22d of April, 1806, which have been produced as evidence by the plaintiff, that up to that time Hoye had not, on his part, complied with the agreement. A third letter from Thomas, dated on the 16th of August, 1806, has been produced and relied on by the plaintiff, which evidently alludes to some departure from the original agreement, which Thomas was willing *to concede on Hoye's granting the indulgence therein asked for; but what was done in consequence of the proposition, **406** thus made, does not appear.

Long after which, in the year 1815, Edward Thomas sued out a *scire facias* on his judgment against this plaintiff John Hoye, as administrator *de bonis non* of the late William Deakins. To which Hoye appeared and put in five pleas, in one of which he relied on the agreement of the 26th of March, 1805; and alleged, that the land therein mentioned became the right and estate of Thomas, and was received by him in full satisfaction of his judgment. But afterwards Hoye withdrew his pleas; and on the 24th of April, 1817, confessed judgment, as appears by the record, to bind assets in hand, and future assets as they accrued.

After which Hoye filed this bill, asking for a specific performance of the agreement of the 26th of March, 1805; but Thomas having died before he had answered; Hoye, by a bill of revivor, made his executors parties. The original bill alleges, that on the 5th of January, 1816, Hoye executed a deed for lands according to the agreement, which deed he tendered to Edward Thomas' attorney, on the 25th of April, 1817, who refused to accept it. But the answer of the defendants in no manner admits this deed; and there is no proof whatever of it; or of its conformity to the agreement.