

Upon the state of facts, I feel perfectly satisfied, that the complainant cannot have the relief he asks, even supposing the agreement to have been not at all affected by the proceedings at law; and to be such a one as a Court of equity would specifically enforce; because the plaintiff Hoye has, in fact, altogether failed to perform his part of it, according to its clear and positive provisions. But, if he had complied with it, he has not placed himself here in a condition to obtain the relief he seeks. He has not brought all the proper parties before the Court. The executors of Edward Thomas might assign the judgment; but his heirs are the persons, who alone are to be benefited or affected by any conveyance of the specified lands, that had been made, or which might now be ordered by the Court.

Whereupon it is decreed, that the said bill of complaint of John Hoye, be and the same is hereby dismissed with costs to be taxed by the register. And it is further decreed, that the order of the 2d of July, 1821, together with so much of the order of the 24th of November, 1824, as prohibits the trustee from making sale of so **407** much of the real estate of the late William Deakins, as was * authorized and directed to be sold by his last will and testament, be and the same is hereby rescinded and annulled.

It was represented, by a petition of King and Hebb, the executors of Thomas; filed on the 14th of December, 1827, that the trustee Kilgour had died; upon which they prayed, that Daniel Duvall might be appointed in his place; which was ordered accordingly. And Duvall having declined to act, William F. Hebb was, by an order of the 8th of April, 1828, appointed trustee to succeed the late John A. T. Kilgour.

On a petition filed, on oath, by Hoye, the administrator *be bonis non* of Deakins, praying that the trustee Hebb be ordered to report, &c.

BLAND, C., 3d February, 1829.—Ordered, that the trustee Hebb make a report of his proceedings, as prayed, or shew good cause to the contrary. Provided, that a copy of this order, together with a copy of the foregoing petition, be served on him on or before the third day of March next.

On the 26th of February, 1829, the trustee Hebb reported, on oath, that he had made sale of certain portions of the real estate of the late William Deakins, to the amount of \$250; which sale was finally ratified on the 31st of August, 1829.

John Hoye, by his petition, stated that the trustee Hebb had neglected to discharge his duty as diligently as he ought to have done; and that he, Hoye, was willing to take the bond given for the purchase money in satisfaction of his claim, the voucher where-