

*DUVALL v. THE FARMERS BANK.

686

PRODUCTION OF BOOKS AND PAPERS.

A petition for the production of books and papers to be used on a trial at law, must give a sufficient description of such documentary evidence. (a)

THIS petition was filed on the 11th of October, 1830, by Grafton B. Duvall against the President, Directors and Company of the Farmers Bank of Maryland. The petition states, on oath, that the petitioner had been sued by the defendant in Anne Arundel County Court, on two several promissory notes, endorsed by him and a certain Richard Duvall, and drawn by the late Lewis Duvall, that those suits stand for trial at the next term of that Court; that the books, writings and papers of the said bank now in its possession or power, contain material and necessary evidence; and that he cannot safely proceed to the trial of those cases without the benefit of the said testimony. The petitioner

upon any bill for foreclosure or sale aforesaid, filed by the executor or administrator of the mortgagee, shall have the same effect as if the said heirs were parties as aforesaid. 1833, ch. 283.

How far these Acts of Assembly may have made any material change in the nature of the estate of the heirs of the mortgagee; and their right to have a foreclosure in opposition to the claims of the widow and next of kin upon the fund considered as personalty gathered into the hands of the executor or administrator; or in what manner they operate upon the interests of his heirs or devisees in general; or upon any such peculiar interest as has arisen in this case; or upon the title of a purchaser under a decree for a sale, remains to be determined. For it may be made a question, how far the General Assembly can, constitutionally, change the nature of an estate, or dispense with the presence of any one as a party to a suit so as, in effect, to deprive him of his property; or to divest him, arbitrarily, and without compensation, of any pecuniary advantage to which, according to the confessedly legal terms of his contract, he would be entitled. According to the law, as well settled before and at the time when these Acts were passed, the mortgagor could not recover in ejectment unless he proved, that the mortgage had been satisfied previous to the bringing of his action; or there was a sufficient foundation to presume such a reconveyance as extinguished the mortgage. *Powell Mortg.* 397; *Beal v. Harwood*, 2 H. & J. 172. But satisfaction must be shewn by deed or the presumption of a deed; otherwise a legal title might, contrary to the spirit of the law, rest on mere parol proof not recorded, nor sanctioned by circumstances and lapse of time. The proceedings in equity are properly conclusive against the executor or administrator; but upon what principle can they be made to operate against the holder of the legal estate who is no party to them?—*Moore v. Plymouth*, 5 Com. Law Rep. 232.

(a) Cited in *Williams v. Williams*, 1 Md. Ch. 201; *Williams v. Savage Co.* 3 Md. Ch. 430. See Rev. Code, Art. 65, secs. 56, 57; *Eschbach v. Lightner*, 31 Md. 528.