

The plaintiff Tessier, by his petition on oath, stated, that the defendants before and since the passing of the decree, and then were felling, carrying away and selling timber and other trees from the land of which William Wyse died seized, and which had been ordered to be sold by the decree; and that the whole of the real estate of the deceased would be insufficient to pay the plaintiff's claim. Whereupon it was prayed, that an injunction might be issued to restrain the defendant from committing waste, &c.

BLAND, C., 7th October, 1830.—It has always been understood here, that such a decree as this on a creditor's suit, requiring the personal representative to account, and directing the real and personal estate to be sold for the payment of the debts, of the deceased, virtually puts the property into the possession of the Court, and places it under its immediate control and protection for the benefit of all concerned; so that, on application for that purpose, the estate may, until a sale can be effected, be disposed of to the best advantage, or immediately protected from injury and loss. *Shewen v. Vanderhorst*, 4 *Cond. Cha. Rep.* 401; *Duwall v. Waters*, 1 *Bland*, 76. Therefore let an injunction issued as prayed.

The defendant Matilda Wyse, by her petition, on oath stated, that she did not attain the age of twenty-one years until the 16th of June, 1830, and believes from the information she has received, that she can be enabled to produce testimony which would have an important bearing on the merits of the plaintiff's claim, and tend to prove that he had no such claim as entitled him either legally or equitably to have a sale of the real estate of the deceased; * and that the defendant Margaretta Wyse, died on the 19th of April, 1830, and her representatives, as such, **61** have not been made parties. Whereupon it was prayed, that the decree might be rescinded, and the case reheard; and that she might be permitted to answer, &c.

Upon which an order was passed, directing that the matter of the petition should stand for hearing on the 12th of October then next; and that all further proceedings under the decree should be suspended until further order, provided that a copy be served, &c.

BLAND, C., 13th October, 1830.—The petition of Matilda Wyse, standing ready for hearing, and having been submitted on notes by the solicitors of the parties, the proceedings were read and considered.

It is admitted, that previous to the death of Margaretta, the case had been set down for hearing. It is not alleged or shewn, that the interests of Margaretta did not survive to the other defendants in the case; and besides her representatives, if they are in