

provided that a copy of this order, together with a copy of the petition, be served on *Eli Hewitt*, on or before the 27th instant.

The plaintiff by her petition stated, that a copy had been served as required; that the defendant had failed to shew cause or to pay; whereupon she prayed for a *feri facias*; which was ordered accordingly. The payment of other instalments of the alimony was enforced in like manner; after which the case was terminated by the death of the defendant.

HOFFMAN v. JOHNSON.

The principles of equity in relation to parties standing as creditor, principal debtor, and surety. Where evidences of debt are received under an agreement, that when paid, they are to go in discharge of so much, the assignee is bound to use due diligence in collecting them; and on failing to do so, to return them to the assignor. The right to take in contiguous vacancy under a warrant of resurvey, is a privilege incident to a *legal*, not an equitable title. Where a tract of land is sold as containing so many acres, *more or less*, a reasonable allowance for small errors, &c., is to be made. But where an allowance may be claimed for deficiency, it may be made up by the vendor, by taking in contiguous vacancy under a warrant of resurvey, before he has parted with his legal title; and the vendee will be bound to receive the vacancy so added, so far as to make up the alleged deficiency.

It appears, that *Fielder Gantt* mortgaged two parcels of land in Frederick county, the one called *Fout's Delight*, and the other *The Resurvey on Beauty*, to the late *James Hunter*, who afterwards made his will, and died; that *Hunter*, by his will, directed his lands to be sold by his executors, for the payment of his debts; that his executors had the mortgages foreclosed, and afterwards sold those lands to *George Schnertzell*, and gave him a bond for a conveyance on the payment of the purchase money; that *Schnertzell* sold a part to *William Hobbs*, who sold it to *John Hoffman*; and the other part *Schnertzell* sold to *John Hoffman*, who thus obtained a claim, as assignee of *Schnertzell*, to the whole; that *Schnertzell* assigned many notes and bonds, in part payment, for which he was to be answerable; that the executors of *Hunter* are dead; and administration *de bonis non* had been granted on his estate; and that *Baker Johnson* had become seized of the legal title to those lands. Upon which, *Hoffman*, *Hobbs*, and *Schnertzell*, on the 23d of July, 1804, filed this bill, to obtain a conveyance of the legal title, alleging, that the whole purchase money had been paid. The